TEXAS REGISTER

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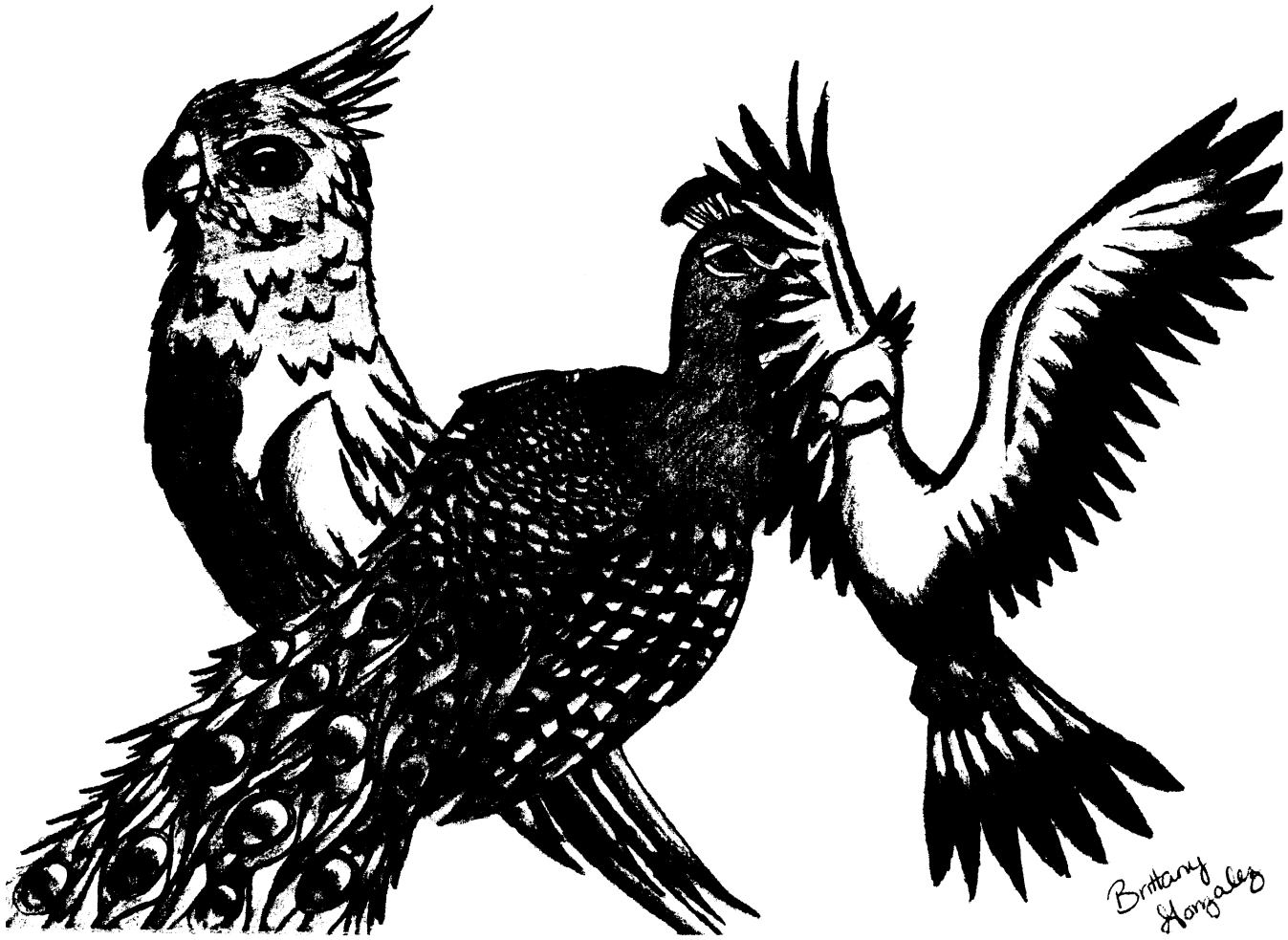

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0712-GA

Requestor:

Dr. Michael D. McKinney, Chancellor

Texas A&M University System

A&M System Building, Suite 2043

200 Technology Way

College Station, Texas 77845-3424

Re: Whether a person who is both a retired state employee and an active state employee for a different state agency is subject to the provisions of chapter 667, Government Code, and if not, whether the person is entitled to receive the state contribution as an active employee as well as a retiree (RQ-0712-GA)

Briefs requested by June 23, 2008

RQ-0713-GA

Requestor:

Mr. Mike Geeslin

Commissioner of Insurance

Texas Department of Insurance

Post Office Box 149104

Austin, Texas 78714-9104

Re: Whether the Texas Department of Insurance may access criminal history record information that is subject to a nondisclosure order under section 411.081(d) of the Government Code (RQ-0713-GA)

Briefs requested by June 23, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200802800
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: May 28, 2008

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 111. EXECUTIVE ADMINISTRATION DIVISION

SUBCHAPTER A. ADMINISTRATION

1 TAC §§111.1 - 111.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Facilities Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Introduction and Background.

The Texas Facilities Commission ("Commission") proposes the repeal of Chapter 111, Subchapter A, §§111.1 - 111.8, concerning administration.

The Commission recently completed a rule review of Chapter 111 in accordance with Texas Government Code §2001.039 (Vernon 2000). Initial notice of the review was published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9735). The published notice of the Commission's adopted rule review may be found in the Rule Review section in this issue of the *Texas Register*.

During its review, the Commission determined that the business necessity remained in effect for §111.1 and §§111.3 - 111.8. The Commission further determined that amendments were required to reflect current statutory language and for consistency throughout the Chapter. Additionally, the Commission found that new rules were required for the following matters: historically underutilized businesses, training and education of employees, and assignment and use of pooled vehicles. The new rules are necessary to comply with statutory rulemaking requirements pursuant to Texas Government Code §656.048(a) (Vernon 2004) (employee training and education), §2161.003 (Vernon 2000) (historically underutilized businesses program), and §2171.1045 (Vernon 2000) (vehicle assignment and use). The Commission further determined that the business necessity for §111.2, relating to definitions of statewide procurement functions that were transferred to the Comptroller of Public Accounts, no longer exists, and the section should be repealed. Chapter 111 previously contained a Subchapter B, entitled Historically Underutilized Business Program. Subchapter B was transferred to the Comptroller of Public Accounts on September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237). The Commission determined that Chapter 111 needed to be restructured to account for the transfer of Subchapter B and the statutory requirements for additional rules. The Commission further determined that Chapter 111 should be repealed and replaced with a new chapter. A concurrent notice of proposed new rules may be found in this issue of the *Texas Register*.

Section by Section Summary.

Section 111.1 sets out the organization of the Commission and contains a general delegation of authority to the Executive Director for the day-to-day operations of the agency. Section 111.2 provides definitions for statewide procurement. Section 111.3 provides the procedures for bid protests, dispute resolution, and hearings. Section 111.4 sets out the ethical standards of the agency. Section 111.5 provides procedures for submitting a complaint to the Commission. Section 111.6 provides procedures for filing a petition for adoption of rules. Section 111.7 incorporates the rules of the Office of the Attorney General as they relate to negotiation and mediation of certain contract disputes. Section 111.8 provides statutorily-required provision regarding establishment and use of a sick leave pool.

Fiscal Note.

Edward L. Johnson, Executive Director, has determined that for each year of the first five-year period following the repeal there will be no fiscal implications for state or local government as a result of the proposed repeal.

Public Benefit/Cost Note.

Mr. Johnson has also determined that for each year of the first five-year period following the repeal the public benefit will be the Commission's ability to replace the repealed Chapter 111 with a new chapter that sets out the Commission's administrative rules in a well-organized manner.

Mr. Johnson has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed repeal. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (Vernon Supp. 2007), are not required.

In addition, Mr. Johnson has determined that for each year of the first five-year period following the repeal there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon Supp. 2007).

Request for Comments.

Interested persons may submit written comments on the proposed repeal to General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047.

Comments may also be sent via E-mail to: *rulescomments@tfc.state.tx.us*.

For comments submitted electronically, please include "Proposed Repeal of Chapter 111" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed repeal. Questions concerning the proposed repeal may be directed to Kay Molina, General Counsel, at (512) 463-7220.

Statutory Authority.

The repeal is proposed under Texas Government Code §§661.002(c) (Vernon 2004); 2001.004(1), 2001.021(b), 2001.039(c) (Vernon 2000); 2152.060(a), 2152.064(c) (Vernon Supp. 2007); 2155.076(a) (Vernon 2000); and 2260.052(c) (Vernon Supp. 2007).

Cross Reference to Statute.

The statutory provisions affected by the proposed repeal are Texas Government Code §§661.002 (Vernon 2004); 2001.021 (Vernon 2000); 2152.060, 2152.064 (Vernon Supp. 2007); 2155.076 (Vernon 2000); and 2260.052 (Vernon Supp. 2007).

§111.1. Organization.

§111.2. Definitions.

§111.3. Protests/Dispute Resolution/Hearing.

§111.4. Ethical Standards.

§111.5. Complaints.

§111.6. Petition for Adoption of Rules.

§111.7. Negotiation and Mediation of Certain Contract Disputes.

§111.8. Sick Leave Pool.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802674
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-7220

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CHAPTER 111. ADMINISTRATION

Introduction and Background.

The Texas Facilities Commission ("Commission") proposes new Chapter 111, Subchapter A, §111.1 and §111.2, Subchapter B, §§111.20 - 111.24, Subchapter C, §§111.30 - 111.32, and Subchapter D, §111.40 and §111.41.

The Commission recently completed a rule review of Chapter 111 in accordance with Texas Government Code §2001.039 (Vernon 2000). Initial notice of the review was published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9735). The published notice of the Commission's adopted rule review may be found in the Rule Review section in this issue of the *Texas Register.*

During its review, the Commission determined that the business necessity remained in effect for §111.1 and §§111.3 - 111.8. The Commission further determined that amendments were required to reflect current statutory language and for consistency throughout the Chapter. Additionally, the Commission found that new rules were required for the following matters: historically underutilized businesses, training and education of employees, and assignment and use of pooled vehicles. The new rules are necessary to comply with statutory rulemaking requirements pursuant to Texas Government Code §656.048(a) (Vernon 2004) (employee training and education), §2161.003 (Vernon 2000) (historically underutilized businesses program), and §2171.1045 (Vernon 2000) (vehicle assignment and use). The Commission further determined that the business necessity for §111.2, relating to definitions of statewide procurement functions that were transferred to the Comptroller of Public Accounts, no longer exists, and the section should be repealed. Chapter 111 previously contained a Subchapter B, entitled Historically Underutilized Business Program. Subchapter B was transferred to the Comptroller of Public Accounts on September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237). The Commission determined that Chapter 111 needed to be restructured to account for the transfer of Subchapter B and the statutory requirements for additional rules. The Commission further determined that Chapter 111 should be repealed and replaced with a new chapter. A concurrent notice of proposed repeal may be found in this issue of the *Texas Register.*

Section by Section Summary.

Proposed new Subchapter A is entitled Organization and contains the following proposed new Sections. Proposed new §111.1 sets out the organization of the Commission. Proposed new §111.2 contains a general delegation of authority to the Executive Director for the day-to-day operations of the agency.

Proposed new Subchapter B is entitled General Provisions and contains the following proposed new Sections. Proposed new §111.20 incorporates by reference the rules of the Texas Ethics Commission concerning Conflicts of Interest relating to the Commission. Proposed new §111.21 incorporates by reference the rules of the Comptroller of Public Accounts relating to historically underutilized businesses. Proposed new §111.22 provides procedures for a petition for adoption of rules. Proposed new §111.23 establishes an employee sick leave pool. Proposed new §111.24 provides procedures concerning the training and education of Commission employees.

Proposed new Subchapter C is entitled Complaints and Dispute Resolution and contains the following proposed new Sections. Proposed new §111.30 provides procedures for submitting complaints to the Commission. Proposed new §111.31 incorporates by reference the rules of the Office of the Attorney General for negotiation and mediation of certain contract disputes. Proposed new §111.32 provides procedures concerning bid protests, dispute resolution, and hearings.

Proposed new Subchapter D is entitled Vehicles and contains the following proposed new Sections. Proposed new §111.40 concerns the management of Commission fleet vehicles. Proposed new §111.41 provides procedures for the assignment and use of pooled vehicles.

Fiscal Note.

Edward L. Johnson, Executive Director, has determined that for each year of the first five-year period the new rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rules.

Public Benefit/Cost Note.

Mr. Johnson has also determined that for each year of the first five-year period the new rules are in effect the public benefit will be clear, organized rules concerning the agency's administrative regulations.

Mr. Johnson has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed new rules. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (Vernon Supp. 2007), are not required.

In addition, Mr. Johnson has determined that for each year of the first five-year period the new rules are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon Supp. 2007).

Request for Comments.

Interested persons may submit written comments on the proposed new rules to General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047.

Comments may also be sent via email to: *rulescomments@tfc.state.tx.us*.

For comments submitted electronically, please include "Proposed New Rules, Chapter 111" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed new rules. Questions concerning the proposed new rules may be directed to Kay Molina, General Counsel, at (512) 463-7220.

SUBCHAPTER A. ORGANIZATION

1 TAC §111.1, §111.2

Statutory Authority.

The new rules are proposed under Texas Government Code §2001.004(1) (Vernon 2000), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute.

The statutory provisions affected by the proposed new rules are Texas Government Code §§2152.051 (Vernon Supp. 2007), 2152.101 (Vernon 2000), and 2152.103 (Vernon 2000).

§111.1. Commission.

(a) All references to the "Commission" in this Chapter mean the Texas Facilities Commission. The Commission is composed of seven members: three members appointed by the Governor, two members appointed by the Governor from a list of nominees submitted by the Speaker of the House of Representatives, and two members appointed by the Lieutenant Governor. The Commissioners shall set policy and employ an Executive Director. The Commissioners retain and exercise all authority and responsibility assigned to them by law and not delegated to the Executive Director.

(b) All decisions of the Commission shall be by majority vote of Commissioners present and voting.

§111.2. Executive Director.

(a) The Executive Director manages the day-to-day business of the Commission, employs staff, and carries out other duties and responsibilities assigned by law or delegated by the Commission.

(b) A delegation of authority to the Executive Director must be made by the Commission in an open meeting. The Commission may review, modify, or ratify a delegation at any open meeting. A change in membership of the Commission does not void an existing delegation of authority; it remains in effect until another one is approved by a majority vote of the Commission at an open meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802676
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-7220

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §§111.20 - 111.24

Statutory Authority.

The new rules are proposed under Texas Government Code §§656.048(a) (Vernon 2004) (employee training and education), 661.002(c) (Vernon 2004) (sick leave pool), 2001.004(1) (Vernon 2000) (rules of practice and procedures), 2001.021(b) (Vernon 2000) (petition for adoption of rules), 2152.064(c) (Vernon Supp. 2007) (ethics rules), and 2161.003 (Vernon 2000) (historically underutilized businesses program), which require the Commission to promulgate rules.

Cross Reference to Statute.

The statutory provisions affected by the proposed new rules are Texas Government Code §§656.048 (Vernon 2004), 661.002 (Vernon 2004), 2001.004 (Vernon 2000), 2001.021 (Vernon 2000), 2152.064 (Vernon Supp. 2007), and 2161.003 (Vernon 2000).

§111.20. Ethical Standards.

The Commission adopts by reference the rules of the Texas Ethics Commission in Title 1, Part 2, Texas Administrative Code, Chapter 45 relating to Conflicts of Interest. The Texas Ethics Commission rules are located at the Office of the Secretary of State's internet website: www.sos.state.tx.us/tac/index.html. The Texas Ethics Commission has specific rulemaking authority relating to the ethical standards set out in Texas Government Code §2152.064 relating to conflicts of interest in certain transactions by the Texas Facilities Commission.

§111.21. Historically Underutilized Businesses.

In accordance with Texas Government Code §2161.003, the Commission adopts by reference Title 34, Part 1, Chapter 20, Subchapter B of

the Texas Administrative Code relating to the Historically Underutilized Business Program of the Comptroller of Public Accounts.

§111.22. Petition for Adoption of Rules.

(a) Any interested person or organization may petition the Commission requesting the adoption or amendment of a rule.

(b) For the purpose of interpreting this section, the term "rule" shall have the same meaning as contained in Texas Government Code, Chapter 2001, §2001.003.

(c) Petitions for adoption of rules must be submitted in writing and directed to the Commission's Executive Director.

(d) The petitioner may either hand deliver the petition to the Commission's central office at 1711 San Jacinto Boulevard, Austin, Texas, 78701, or mail the petition to P.O. Box 13047, Austin, Texas 78711-3047.

(e) For purposes of calculating days under this section, the date of submission of a petition under this section shall be the date the petition is hand delivered to the Commission, or if the petition was sent by mail or carrier, the date it is date-stamped according to regular agency incoming mail procedures.

(f) The petition must include the following minimum requirements:

(1) specify or otherwise make clear that the petition is made pursuant to the provisions of the Administrative Procedure Act;

(2) clearly state the body or substance of the rule requested for adoption, and, if appropriate, relate the requested rule to an adopted rule or rules of the Commission;

(3) contain the full name and address of the petitioner; and

(4) be signed by the petitioner.

(g) The Executive Director or the Executive Director's designee, shall:

(1) acknowledge receipt of the petition in writing and include in the letter the date the petition was received; and

(2) communicate with the petitioner, if necessary, to clarify the requested rule or to clarify other relevant information contained in the petition.

(h) Not later than the 60th day after the date of submission of a petition under this section, the Executive Director shall either:

(1) deny the petition in writing, stating the reasons for the denial; or

(2) initiate rulemaking procedures and inform the petitioner of the date rule action by the Commission is scheduled pursuant to Texas Government Code, Title 10, Chapter 2001.

(i) The Executive Director shall provide copies of all petitions, whether denied or approved, to the Commissioners prior to scheduled Commission meetings for review.

§111.23. Sick Leave Pool.

A sick leave pool is established to alleviate hardship caused to an employee and employee's immediate family if a catastrophic illness or injury forces the employee to exhaust all sick leave time earned by that employee and to lose compensation from the state.

(1) The Commission's Human Resources Director is designated as the pool administrator.

(2) The pool administrator will recommend a policy, operating procedures, and forms for the administration of this section to the Executive Director.

(3) Operation of the pool shall be consistent with Texas Government Code, Chapter 661.

§111.24. Training and Education of Employees.

(a) With the approval of the Executive Director, the Commission may make available to its employees funds for training and education in accordance with the Employee Training Act, Texas Government Code §§656.041 - .049.

(b) In order to be eligible for agency supported training and education, the employee must demonstrate in writing, to the satisfaction of the Executive Director, that the training or education is related to the duties or prospective duties of the employee.

(c) An employee who completes training and education to obtain a degree or certification for which the Commission has provided all or part of the required fees must agree in writing to fully repay the Commission any amounts paid for educational assistance if the employee voluntarily terminates employment with the agency within one year after the course or courses are completed.

(d) All materials received by an employee as part of agency-funded training and education remain the property of the Commission.

(e) Approval to participate in a training and education program, including an agency-sponsored training, seminar or conference, shall not in any way affect an employee's at-will status. The approval of a training and education program is not a guarantee or indication that approval will be granted for subsequent training and education programs. Approval to participate in a training and education program shall in no way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802677
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-7220

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SUBCHAPTER C. COMPLAINTS AND DISPUTE RESOLUTION

1 TAC §§111.30 - 111.32

Statutory Authority.

The new rules are proposed under Texas Government Code §§2152.060(a) (Vernon Supp. 2007) (complaints), 2155.076(a) (Vernon 2000) (bid protests, dispute resolution, and hearings), and 2260.052(c) (Vernon Supp. 2007) (negotiation and mediation of contract disputes), which require the Commission to promulgate rules.

Cross Reference to Statute.

The statutory provisions affected by the proposed new rules are Texas Government Code §§2152.060 (Vernon Supp. 2007), 2155.076 (Vernon 2000), and 2260.052 (Vernon Supp. 2007).

§111.30. Complaints.

Actual consumers, service recipients or persons contracting with the Commission shall be provided notice of the Commission's name, the mailing address and the telephone number where complaints may be directed to the Commission's Customer Service Representative. Notice of this information shall be effective if provided by any of the following methods:

(1) Notice typed or stamped notice placed on or attached to each invoice, billing statement, contract or agreement between the Commission and consumers, service recipients or persons contracting with the Commission.

(2) Notice posting notice at locations on the Commission's premises accessible to the Commission's consumers, service recipients or persons contracting with the Commission.

(3) Notice written notice from the Executive Director of the Commission to the directors of all other state agencies and entities that are consumers, service recipients or persons contracting with the Commission.

§111.31. Negotiation and Mediation of Certain Contract Disputes.

(a) The Commission adopts by reference the rules of the Office of the Attorney General in Title 1, Part 3, Texas Administrative Code, Chapter 68 relating to Negotiation and Mediation of Certain Contract Disputes. The Office of the Attorney General rules are located at the Office of the Secretary of State's internet website: www.sos.state.tx.us/tac/index.html.

(b) The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of contract's complexity, subject matter, dollar amount, or method and time of performance.

(c) The adoption of this rule is required by Texas Government Code, Chapter 2260, §2260.052(c).

§111.32. Protests/Dispute Resolution/Hearing.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Commission's Procurement Manager. Such protests must be in writing and received in the Procurement Manager's office within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this section. Copies of the protest must be mailed or delivered by the protesting party to the using agency and other interested parties. For the purposes of this section, "interested parties" means all vendors who have submitted bids or proposals for the contract involved.

(b) In the event of a timely protest or appeal under this section, the state shall not proceed further with the solicitation or with the award of the contract unless the Executive Director, after consultation with the using agency and the Procurement Manager, makes a written determination that the award of contract without delay is necessary to protect the best interests of the state.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the using agency and other identifiable interested parties.

(d) The Procurement Manager shall have the authority, prior to appeal to the Executive Director of the Commission, to settle and resolve the dispute concerning the solicitation or award of a contract. The Procurement Manager may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the Procurement Manager will issue a written determination on the protest.

(1) If the Procurement Manager determines that no violation of rules or statutes has occurred, he shall so inform the protesting party, the using agency, and other interested parties by letter which sets forth the reasons for the determination.

(2) If the Procurement Manager determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he shall so inform the protesting party, the using agency, and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Procurement Manager determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he shall so inform the protesting party, the using agency, and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(f) The Procurement Manager's determination on a protest may be appealed by the protesting party to the Executive Director of the Commission. An appeal of the Procurement Manager's determination must be in writing and must be received in the Executive Director's office no later than 10 working days after the date of the Procurement Manager's determination. The appeal shall be limited to review of the Procurement Manager's determination. Copies of the appeal must be mailed or delivered by the protesting party to the using agency and other interested parties and must contain a certified statement that such copies have been provided.

(g) The Executive Director may confer with the Commission's General Counsel in his review of the matter appealed. The Executive Director may, in his discretion, refer the matter to the Commissioners for their consideration at a regularly scheduled open meeting or issue a written decision on the protest.

(h) When a protest has been appealed to the Executive Director under subsection (f) of this section and has been referred to the Commissioners by the Executive Director under subsection (g) of this section, the following requirements shall apply:

(1) Copies of the appeal and responses of interested parties, if any, shall be mailed to the Commissioners.

(2) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the Commission's General Counsel at least 48 hours in advance of the open meeting.

(3) The Commissioners may consider oral presentations and written documents presented by staff and interested parties. The Commission Chair shall set the order and amount of time allowed for presentations.

(4) The Commissioners' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

(i) Unless good cause for delay is shown or the Commission determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j) A decision issued either by the Commissioners in open meeting, or in writing by the Executive Director, shall be the final administrative action of the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802678
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-7220

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SUBCHAPTER D. VEHICLES

1 TAC §111.40, §111.41

Statutory Authority.

The new rules are proposed under Texas Government Code §2171.1045 (Vernon 2000), which requires the Commission to promulgate rules relating to vehicle assignment and use.

Cross Reference to Statute.

The statutory provision affected by the proposed new rules is Texas Government Code §2171.1045 (Vernon 2000).

§111.40. Fleet Management.

In accordance with the plan developed by the Office of Vehicle Fleet Management under the direction of the State Council on Competitive Government, the Commission will adhere to all requirements detailed in the plan, including, but not limited to:

(1) The disposal of any vehicles declared excess through the routine review of vehicle use. The Commission will:

(A) follow the Commission's Surplus Property Division process for the disposal of vehicles; and

(B) submit proper documentation to certify successful disposal of vehicles declared excess.

(2) The adoption of all detailed policies, procedures and goals related to vehicle replacement, state fuel contracts, alternative fuel use, minimum use criteria, interagency agreements, and fleet consolidation.

(3) The submission of all fleet data required for vehicle inventory, fuel, mileage, repairs and preventive maintenance on an internet-based technology fleet data system.

(4) The review of internal fleet policies and procedures to determine if the fleet management "Best Practices," as determined by the Office of Vehicle Fleet Management under the direction of the State Council on Competitive Government, are appropriate and feasible for use by the fleet.

(5) The adherence to the fleet size and vehicle purchasing restrictions established by the plan adopted on October 11, 2000, and any further fleet size reduction resulting from the ongoing review of vehicle use.

§111.41. Assignment and Use of Pooled Vehicles.

(a) Each vehicle in the Commission's vehicle fleet pool, with the exception of vehicles assigned to field employees, is assigned to the agency motor pool and is available for checkout as needed. Some vehicles, because of mission critical status, may be permanently assigned to sub-pools within divisions and available only to employees within those divisions.

(b) Commission employees must present a valid Texas driver's license each time a pooled vehicle is checked out.

(c) Pooled vehicle assignments will be made by designated Commission personnel to ensure that all Commission vehicles are used and rotated to balance mileage and time usage among all pooled vehicles.

(d) Pooled vehicles assigned on a regular or daily basis to individual administrative or executive employees, require written documentation that the assignment is critical to the Commission's needs and mission of the agency. Documentation for all assigned Commission vehicles will be kept on file with designated Commission personnel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802679
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-7220

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.9

The Texas Department of Information Resources (department) proposes amendments to §201.9, concerning board policies, to add subsection (c). The new subsection describes the department's donation policy, including the criteria, procedures and standards of conduct governing the relationship between the department and its officers and employees and private donors. The new subsection is necessary because the department was given authority in §2054.052(g), Texas Government Code, to accept gifts related to its duties. Chapter 2255, Texas Government Code, requires the adoption of a donation policy. The proposed subsection authorizes the department to accept gifts and donations the department determines are in the public interest to accept as a result of an emergency, including both natural and manmade disasters. The executive director is authorized by the board to accept donations up to $250,000 in value so long as each such donation is acknowledged by the board within 30

days of the donation. Gifts and donations that exceed $250,000 in value must be approved by the board. Subsection (c)(4) requires all gifts be recorded in the board minutes along with the name of the donor, a description of the donation and a statement of the purpose of the donation. Donations must be found to further the department's mission or duties, provide significant public benefit and not influence or reasonably appear to influence the performance of duties by the department. Subsection (c)(6) requires execution of a donation agreement if the value of the donation exceeds $10,000, or if the department determines a donation agreement is necessary. Subsection (c)(7) delineates the information that is to be disclosed in the donation agreement.

Renée Mauzy, General Counsel for the department, has determined that for each year of the first five years the proposed amendments are in effect there will be no cost to state or local governments.

Ms. Mauzy has also determined that for each year of the first five years the proposed amendments are in effect the public will benefit from the public disclosure of each gift donated to the department for use during times of emergency. There are no anticipated economic costs to individuals or small businesses as a result of the amendments.

Comments on the proposed amendments to §201.9 may be submitted to Renée Mauzy, General Counsel, Texas Department of Information Resources, 300 West 15th Street, Suite 1300, Austin, Texas 78701, renee.mauzy@dir.state.tx.us for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed pursuant to Chapter 2255, Texas Government Code, which requires the adoption of rules governing the relationship between donors and the donee agency and its employees and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Section 2054.052(g), Texas Government Code, is affected by this proposal.

§201.9. Board Policies.

(a) - (b) (No change.)

(c) In compliance with Chapter 2255, Texas Government Code, this subsection establishes the criteria, procedures and standards of conduct governing the relationship between the department and its officers and employees and private donors. This subsection authorizes the department to accept gifts and donations the department determines it is in the public interest to accept as a result of an emergency, including both natural and manmade disasters.

(1) A private donor may make donations, including gifts, to the department to be spent or used for public purposes during times of emergency, including times of manmade and natural disasters. Use by the department of the donation must be consistent with the mission and duties of the department. If the donor specifies the purpose for which the donation may be spent, the department must expend the donation only for that purpose.

(2) Donations must be spent in accordance with the State Appropriations Act and shall be deposited in the state treasury unless statutorily exempted.

(3) The executive director is hereby delegated authority to coordinate all donations and may accept donations that do not exceed $250,000 in value on behalf of the department. Each donation accepted by the executive director must be acknowledged by the board within thirty days of acceptance of the donation by the department. Donations that exceed $250,000 in value must be accepted by the board.

(4) Acceptance of the donation by either the board or the executive director of the department must be recorded in the board minutes, together with the name of the donor, description of the donation and a statement of the purpose of the donation.

(5) Donations may be accepted only if the executive director or board, as applicable, determines the donation will further the department's mission or duties, provide significant public benefit and not influence or reasonably appear to influence, the department in the performance of its duties.

(6) Execution of a donation agreement is required if the value of the donation exceeds $10,000 or if a written agreement is necessary, in the opinion of the department, to:

(A) indemnify the department as to ownership;

(B) prevent potential claims that could result from use of the donation;

(C) document donation terms or conditions; or

(D) describe how the donation will further the department's mission or duties, provides a significant public benefit and is not made in an effort to influence action on the part of the department.

(7) Each donation agreement must include:

(A) a description of the donation, including a determination of its value;

(B) donor attestation of ownership rights in the donation;

(C) any restrictions or terms of use of the donation imposed by the donor;

(D) contact information for the donor;

(E) a statement that the department takes no position regarding and is not responsible for any tax-related representations by the donor;

(F) the signature of the executive director and the donor or an authorized representative of the donor if it is an entity rather than an individual.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200802701
Renée Mauzy
General Counsel
Department of Information Resources
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For further information, please call: (512) 463-6124

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CHAPTER 206. STATE WEB SITES

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 206, §§206.1, 206.50, 206.51, 206.54, 206.55, 206.70, 206.71, 206.74, and 206.75, concerning State Web Sites. The proposed changes include the addition of new definitions and the modification of some existing

definitions in §206.1; a requirement in §206.50 and §206.70, respectively, that each agency and institution of higher education must comply with the requirements of the rules unless an exception is approved by the agency's executive director or an exemption has been made for specific technologies under §213.17 or §213.37; and moving existing requirements to other sections of Chapter 206 or 213. The proposed changes include a requirement in §206.51 and §206.71, respectively, that each agency and institution of higher education must develop and publish an accessibility policy by June 30, 2009. The rules require that the accessibility policy include a plan for non-compliance remediation, the department must develop and publish a procedure to manage non-compliance, and state agencies and institutions of higher education appoint an accessibility coordinator. The proposed changes include the definition of a term in paragraph (1)(A), a revised title to paragraph (1)(B), and a modified reference in paragraph (3)(A) in §206.54 and §206.74; a new subsection (b) in §206.55 and §206.75 that was moved from §206.51 and §206.71; the deletion of the term "Accessibility Policy", and the modification of certain terms in §206.55 and §206.75. The proposed changes implement requirements of Texas Government Code, Chapter 2054, Subchapter M, Access to Electronic and Information Resources by Individuals with Disabilities.

1 TAC §206.1, Applicable Terms and Technologies for State Web Sites

In §206.1 the department proposes to delete the definition of "Texas Homeland Security", because it is not relevant to this chapter.

The department proposes to change "Survey", to remove the annual requirements for reporting.

The department proposes to change "Web page" to clarify its meaning.

The department proposes to add the following definitions because of new or revised content of 1 TAC Chapter 206:

"Accessibility Coordinator", "Alternate formats", "Alternate methods", "Electronic and information resources", "Electronic and information resources accessibility standards", "Exception", "Exemption", and "Site Owners".

1 TAC §206.50 and §206.70, Accessibility and Usability of State Web Sites and Institution of Higher Education Web Sites

Section 206.50 and §206.70 have proposed changes to the existing rules related to making content on state web sites available to all users. Most of the proposed changes consist of content being moved between sections or to other parts of the rules for clarity.

The department proposes to delete the introductory paragraphs of §206.50 and §206.70, and move them to 1 TAC §206.51 and §206.71, Accessibility Policy and Coordinator.

The department proposes to move the existing requirement to have an accessibility policy from §206.50 and §206.70 to 1 TAC §206.51 and §206.71. The department proposes to add a new paragraph to the beginning of the section to require compliance with the standard unless an exemption or exception is granted.

The department proposes paragraph (1)(B) (proposed as (a)(2)) be modified to add a reference to the definitions of "alternate formats" and "alternate methods." Paragraph (1)(K) (proposed as (a)(11)) is amended to change "text only" to "alternative version" as the proposed term has a broader meaning.

The department proposes a revision to paragraph (2) (proposed as subsection (b)) that each agency and institution of higher education must comply with the requirements of the rules unless an exception is approved by the agency's executive director or an exemption has been made for specific technologies under §213.17 or §213.37.

The department proposes a revision to paragraph (3) (proposed as subsection (c)) to reference a defined term and delete an obsolete web site reference.

The department proposes to add a reference to Texas Government Code, Chapter 2054, Subchapter M, to paragraph (6) (proposed as subsection (f)) of §206.50 and §206.70 for clarity.

The department proposes to delete paragraph (7) and move the part regarding the survey requirement to §213.20 and §213.40, and move the part regarding the training requirement to §213.19 and §213.39.

The department proposes the deletion of paragraph (8) as commercial availability is addressed in §213.17 and §213.37.

1 TAC §206.51 and §206.71, Accessibility Policy

Accessibility is related to both information technology and Web site rules. Because some people may not have a need to look at the rules in 1 TAC Chapter 213, regarding Electronic and Information Resources, the requirements for the accessibility policy and accessibility coordinator are also proposed for 1 TAC §206.51 and §206.71, Accessibility Policy. The changes include a new requirement for agencies and institutions of higher education to have an Accessibility Coordinator to develop, maintain, and implement an internal accessibility policy.

The department proposes to change the title of the rule from "Accessibility Policy" to "Accessibility Policy and Coordinator".

The department proposes to move the introductory paragraph to subsection (b) of §206.55 and §206.75 for clarity.

The department proposes to add new subsections (a) - (c) regarding Accessibility policy requirements.

The department proposes to add a new subsection (d) adding the requirement for an Accessibility Coordinator for state agencies and institutions of higher education.

1 TAC §206.54 and §206.74, State Web Site Link and Privacy Policy

The department proposes that the introductory paragraph be revised to correct terminology.

The department proposes that paragraph (1)(A) be revised to define a term and delete a reference to a web site.

The department proposes to revise paragraph (1)(B), (D), and (E) by putting the requirements into numbered lists for clarity.

The department proposes that the title of paragraph (1)(B) be changed from "What Site Owners May Not Do in Linking to State Agency Web Sites" to "What State Agency and Institution of Higher Education Site Owners May Not Do in Linking to State Agency Web Sites".

The department proposes modifying the reference in paragraph (3)(A).

1 TAC §206.55 and §206.75, Linking and Indexing State Web Sites

The department proposes to add a new subsection (b) that was moved from §206.51 and §206.71.

The department proposes revisions to relettered subsection (c) to correct terminology.

The department proposes the deletion of existing subsections (b)(2)(B) and (c)(4) "Accessibility policy" from the list of links.

The department proposes to correct the numbering for proposed subsections (c)(2) and (d)(2).

IMPACT ON STATE AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

The rule changes should have a minimal impact because most of the requirements for the rules became law on September 1, 2006. Some comments of concern have been expressed about the cost of bringing Web pages and PDF documents into compliance. This is already a requirement of the existing rules in 1 TAC Chapter 206. The only significant new requirement is set forth in 1 TAC §§206.51, 206.71, 213.21 and 213.41, Accessibility Policy and Coordinator, which require each agency and institution of higher education to have an accessibility coordinator. The impact will vary depending on if the agency or institution of higher education already has someone on staff in that position or if they have to hire someone. The estimated cost for hiring someone for the position is stated in the fiscal note below.

Because the proposed rules apply to institutions of higher education, the department, in consultation with the Information Technology Council for Higher Education, prepared an analysis of the impact of the rules that included consideration of the requirements in Texas Government Code, Chapter 2054, Subchapter M. Issues and concerns regarding the potential impact of the rules on higher education and student populations were identified, including: (1) the proposed rules require certain approvals by the agency head. Institutions of higher education requested that exceptions be approved by someone other than the head of the institution; (2) the term "Web page" should be clarified; and (3) certain other definitions should be revised. The department proposed alternatives to address the issues, which were acceptable to the Information Technology Council for Higher Education, including: (1) explaining that approval of exceptions by the institution of higher education's president or chancellor was statutorily required, but could be addressed by internal policies and procedures; (2) revising the term "Web page"; and (3) changing certain definitions.

FISCAL NOTE

Ginger Salone, Deputy Executive Director of Statewide Technology Service Delivery, has determined that for the first five-year period the rules are in effect, the fiscal impact to state agencies and institutions of higher education is approximately $11 million. This cost is related to the change in rule that requires state agencies and institutions of higher education to designate an Accessibility Coordinator for their agencies. Sixty two agencies have indicated they do not currently have an Accessibility Coordinator designated. Depending on the size of the agency, the department estimates that the requirements of this position will vary from fifteen percent of a full-time equivalent (FTE) for agencies with less than 100 FTEs, a total of $1.1 million; fifty percent of an FTE for agencies with less than 1,000 FTEs, a total of $4 million; and one hundred percent of an FTE for agencies with 1,000 FTEs and greater, a total of $5.9 million.

PUBLIC BENEFIT

The department is committed to making electronic and information resources usable by people of all abilities and disabilities. The department worked in collaboration with other government entities to develop these proposed rule changes. Ms. Salone has determined that for each year of the first five years the proposed rules are in effect the public benefits anticipated as a result of enforcing or administering the rules will be that all users of electronic and information resources covered by these rules will have equal access to state government. There are no anticipated economic costs to persons or small businesses required to comply with the proposed rules.

Comments on the proposed amendments may be submitted to Martin Zelinsky, Assistant General Counsel, Department of Information Resources, 300 West 15th Street, Suite 1300, Austin, Texas 78701, martin.zelinsky@dir.state.tx.us for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

1 TAC §206.1

The amendments are proposed under §2054.052(a) and §2054.453, Texas Government Code.

No other statutes are affected by this proposal.

§206.1. Applicable Terms and Technologies for State Web Sites.

The following words and terms, when used with this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) 508 compliance--Using testing/validation tools and procedures to check Web pages/content for compliance with the §508 requirements of the Rehabilitation Act relating to Web accessibility contained in 36 C.F.R. Part 1194.

(2) Accessible--A Web page that can be used in a variety of ways and that does not depend on a single sense or ability.

(3) Accessibility Coordinator--Coordinators are responsible for organizing and supporting the implementation Texas Government Code, Chapter 2054, Subchapter M within their respective agencies, and have been appointed by their agency as the central point of contact for information concerning accessibility issues and solutions for electronic and information resources.

(4) [~~(3)~~] Accessibility Policy--The policies of a state agency or institution of higher education to ensure that access to its information, services, and programs are accessible, usable, understandable and navigable.

(5) Alternate formats--Alternate formats usable by people with disabilities may include, but are not limited to, Braille, ASCII text, large print, recorded audio, and electronic formats that comply with this chapter.

(6) Alternate methods--Different means of providing information, including product documentation, to people with disabilities. Alternate methods may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

(7) [~~(4)~~] Contact information--A [~~a~~] list of key personnel and/or position or program contacts, including public contact telephone numbers, general e-mail address, and other information deemed necessary by the agency or institution of higher education for facilitating public access.

(8) [~~(5)~~] Compact With [~~with~~] Texans--Customer [~~customer~~] service standards and performance measures required of state

agencies, including institutions of higher education, by [§]§2113.006 and §2114.006, Texas Government Code.

(9) Electronic and information resources--Includes information technology and any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, duplication, or delivery of data or information. The term electronic and information resources includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation are not information technology.

(10) Electronic and information resources accessibility standards--Texas accessibility standards for Electronic and Information Resources that comply with the applicable specifications contained in Chapter 213, Subchapter B, §§213.10 - 213.16 of this title for state agencies and Chapter 213, Subchapter C, §§213.30 - 213.36 of this title for institutions of higher education.

(11) Exception--A justified, documented non-conformance with one or more standards or specifications of Chapter 206 and/or Chapter 213 of this title, which has been approved by the Executive Director of an Agency or the President or Chancellor of an Institution of Higher Education.

(12) Exemption--A justified, documented non-conformance with one or more standards or specifications of Chapter 206 and/or Chapter 213 of this title, which has been approved by the department and which is applicable statewide.

(13) [~~(6)~~] Home page--The initial page or entry point to a state Web site.

(14) [~~(7)~~] HTML--HyperText Markup Language.

(15) [~~(8)~~] Internet--The [~~the~~] network of interconnected networks employing standards published by the Internet Engineering Task Force (IETF).

(16) [~~(9)~~] Key public entry point--A Web page that a state agency or institution of higher education has specifically designed for members of the general public to access official information (e.g., the governing or authoritative documents) from the agency or institution of higher education.

(17) [~~(10)~~] Link Policy--State Web Site Link and Privacy Policy that identify the terms under which a person may use, copy information from, or link to a generally accessible Internet site of a state agency or institution of higher education. The requirements for these policies for state agencies other than institutions of higher education are set forth in Subchapter [~~subchapter~~] B, §206.54 of this chapter [~~and are available at http://www.dir.state.tx.us/link_policy.htm~~]. The requirements for these policies for institutions of higher education are set forth in Subchapter [~~subchapter~~] C, §206.74 of this chapter [~~and are available at http://www.dir.state.tx.us/link_policy2.htm~~].

(18) [~~(11)~~] Logging software and cookies--Particular methods employed for the purpose of tracking visitors to Web sites. The information collected for analysis can include where the request came from, time, pages visited, and identifiable information about the visitor.

(19) [~~(12)~~] Open Records/Public Information Act notice--The policies and practices of the state agency or institution of higher education for providing public access to governmental information and decisions.

(20) [~~(13)~~] Privacy and Security Policy--A [~~a~~] statement about what information is collected by the Web site of a state agency or institution of higher education and how the information will be used and protected, under what conditions the information may be shared or released to another party, and the procedure under which a member of the public is entitled to receive and/or correct information that a state agency, including an institution of higher education, maintains about the individual.

(21) Site Owners--A state agency or institution of higher education that maintains Web pages.

(22) [~~(14)~~] Site Policies page--A [~~a~~] Web page containing the policies of the state agency or institution of higher education, or a link to each policy.

(23) [~~(15)~~] State Web site--A [~~a~~] state agency or institution of higher education owned, -operated by/or for, or -funded Web site connected to the Internet, including the home page and any key public entry points.

(24) [~~(16)~~] SSN--Social Security Number.

(25) [~~(17)~~] SSL--Secure Sockets Layer. The Internet security standard for point-to-point, encrypted connections between Web servers and client browsers.

(26) [~~(18)~~] Statewide Search--A [~~a~~] link to the TRAIL Web site.

(27) [~~(19)~~] Survey--An [~~annual~~] assessment [~~report~~] of State Web site compliance with the accessibility standards. [~~The survey will also be used to identify specific requirements for accessibility training for Web content providers/developers. Additional information and resources are included in the State Web Site guidelines available at http://www.dir.state.tx.us.~~]

(28) [~~(20)~~] Training/Technical Assistance--Accessibility training and technical assistance for Web content providers/developers on compliance with the accessibility standards. [~~Additional information and on-line resources are included in the State Web Site guidelines available at http://www.dir.state.tx.us.~~]

[~~(21) Texas Homeland Security--the Governor's Office Web site with information about current homeland security threat levels in Texas, available at http://www.texashomelandsecurity.com.~~]

(29) [~~(22)~~] TRAIL--Texas Records and Information Locator or its successor. [~~Additional information is available at http://www.tsl.state.tx.us.~~]

(30) [~~(23)~~] Transaction payment information--Bank [~~bank~~] account and routing number, credit, debit, charge, or other forms of card-based, access device number, and/or Internet based[~~,~~] payment systems. Access device means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone, or in conjunction with another access device, may be used to:

(A) obtain money, goods, services, or another thing of value; or

(B) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(31) [~~(24)~~] Transaction Risk Assessment--An evaluation of the security and privacy required for an interactive Web session providing public access to government information and services. Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" available on the department's Web site [~~at http://www.dir.state.tx.us/UETA_Guideline.htm~~].

(32) [~~(25)~~] Usability--Web design criteria that focuses on user performance, ease of navigation, is understandable and is visually appealing.

(33) [~~(26)~~] W3C--World Wide Web Consortium. Additional information and copies of the current standards and recommendations are available at http://www.w3.org.

(34) [~~(27)~~] Web accessibility standards--Texas Web accessibility standards for Web pages/content that comply with the applicable specifications contained in Subchapter B, §206.50[~~(1)~~] of this chapter for state agencies and Subchapter C, §206.70[~~(1)~~] of this chapter for institutions of higher education.

(35) [~~(28)~~] Web bug--Code [~~code~~] used to track and/or report information about a visitor to a Web page, or used in an e-mail message. Also known as a Web Beacon or Clear GIF.

(36) [~~(29)~~] Web page--A document, on a state Web site, consisting of a file (e.g. HTML, dynamic links, PHP) and any related files for scripts and graphics, and often hyperlinked to other documents. [~~A document that a state agency or institution of higher education has specifically designed for members of the public to access the official information (e.g., the governing or authoritative documents) via the Internet.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Renée Mauzy
General Counsel
Department of Information Resources
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For further information, please call: (512) 463-6124

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SUBCHAPTER B. STATE AGENCY WEB SITES

1 TAC §§206.50, 206.51, 206.54, 206.55

The amendments are proposed under §2054.052(a) and §2054.453, Texas Government Code.

No other statutes are affected by the proposal.

§206.50. Accessibility and Usability of State Web Sites.

(a) Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this title, all new or changed Web pages/content shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications: [~~Each state agency shall develop and publish an accessibility policy for its Web site and/or Web pages that addresses the following:~~]

[~~(1) Effective September 1, 2006, unless an exception (based on the requirements addressed in §2054.460, Government Code) is approved by the executive director of the state agency, all new or changed Web pages/content shall comply with the following Texas Web accessibility standards/specifications, where applicable:~~]

(1) [~~(A)~~] A text equivalent for every non-text element shall be provided (e.g., via "alt," "longdesc," or in element content).

(2) [~~(B)~~] Based on a request for accommodation of a Web cast of a live/real time open meeting (Open Meetings Act, Texas Government Code, Chapter 551) or training and informational video productions which support the agency's mission, each state agency shall consider alternative forms of accommodation [~~(examples of different technologies and forms of accommodation and additional information for state agencies to consider in the development of accessible training and informational video and multimedia productions which support the agency's mission are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from http://www.dir.state.tx.us)~~]. Refer to §206.1 of this chapter for definitions for Alternate Formats and Alternate Methods.

(3) [~~(C)~~] Web pages shall be designed so that all information conveyed with color is also available without color.

(4) [~~(D)~~] Documents shall be organized so they are readable without requiring an associated style sheet.

(5) [~~(E)~~] Redundant text links shall be provided for each active region of a server-side image map.

(6) [~~(F)~~] Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.

(7) [~~(G)~~] Row and column headers shall be identified for data tables.

(8) [~~(H)~~] Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.

(9) [~~(I)~~] Frames shall be titled with text that facilitates frame identification and navigation.

(10) [~~(J)~~] Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(11) [~~(K)~~] An alternative version [~~A text-only~~] page, with equivalent information or functionality, shall be provided to make a Web site comply with the provisions of this section, when compliance cannot be accomplished in any other way. The content of the alternative [~~text-only~~] page shall be updated whenever the primary page changes.

(12) [~~(L)~~] When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by assistive technology.

(13) [~~(M)~~] When a Web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with the following:

(A) [~~(i)~~] When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(B) [~~(ii)~~] Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(C) [~~(iii)~~] A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(D) [~~(iv)~~] Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(E) [~~(v)~~] When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(F) [~~(vi)~~] Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(G) [~~(vii)~~] Applications shall not override user selected contrast and color selections and other individual display attributes.

(H) [~~(viii)~~] When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(I) [~~(ix)~~] Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(J) [~~(x)~~] When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(K) [~~(xi)~~] Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(L) [~~(xii)~~] When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(14) [~~(N)~~] When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(15) [~~(O)~~] A method shall be provided that permits users to skip repetitive navigation links.

(16) [~~(P)~~] When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(b) Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this title, all new or changed Web page/site designs shall be tested by the state agency using one or more §508 compliance tools in conjunction with manual procedures to validate compliance with this chapter. State agencies shall establish policies to monitor their Web site for compliance with this chapter. Additional information about testing tools and resources are available on the department's Web site.

[~~(2) Effective September 1, 2006, unless an exception (based on the requirements addressed in §2054.460, Government Code) is approved by the executive director of the state agency, new Web page/site designs shall be tested by the state agency using one or more §508 compliance tools in conjunction with manual procedures to validate compliance with the Texas Web accessibility standards. State agencies shall establish policies to monitor their Web site for compliance with the Texas Web accessibility standards. Additional information about testing tools and resources are in the State Web Site guidelines that are available from http://www.dir.state.tx.us.~~]

(c) [~~(3)~~] Each state Web site shall avoid vendor specific "non-standard" extensions and shall comply with applicable standards (e.g., IEFT (if using secure socket layer (SSL) connections), W3C (if using Cascading Style Sheets (CSS) and validated using the W3C CSS Validation Service), etc. For guidance regarding "non-standard" extensions, emerging technologies and applicable standards, state agencies shall refer to the department's guidelines [~~available at http://www.dir.state.tx.us~~].

(d) [~~(4)~~] The policy should cover testing and validation of Web pages.

(e) [~~(5)~~] Each state Web site should be designed with consideration for the types of Internet connections available to the citizens of Texas, and undergo accessibility and usability testing.

(f) [~~(6)~~] Testing/validation tools and manual procedures for validating [~~§508 compliance satisfy~~] compliance with Chapter 2054, Subchapter M, Texas Government Code [~~the Texas Web accessibility standards~~].

[~~(7) All state agencies shall participate in the survey and should participate in the training identified by the department in the State Web Site guidelines available at http://www.dir.state.tx.us. As a minimum, Web content providers/developers should understand the requirements for complying with §508 requirements for the following:~~]

[~~(A) Text Alternatives for non-text content.~~]

[~~(B) Checking for Accessibility.~~]

[~~(C) Accessible Navigation.~~]

[~~(D) Image maps.~~]

[~~(E) Audio & Multimedia.~~]

[~~(F) Accessible Forms.~~]

[~~(G) Accessible Tables.~~]

[~~(H) Scripts and Applets.~~]

[~~(I) Using Style Sheets.~~]

[~~(8) The lack of commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on state agencies are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from http://www.dir.state.tx.us.~~]

§206.51. Accessibility Policy and Coordinator.

(a) Each state agency shall develop and publish an accessibility policy, by June 30, 2009, which includes the standards and specifications of this chapter. [~~The home page of a state Web site, and key~~

~~public entry points, shall include an "Accessibility" link to, or a "Site Policies" link to a Web page that contains the state agency's accessibility policy, site validation (e.g., §508), contact information for the agency's accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site.~~]

(b) Each state agency's accessibility policy shall include a plan by which all non-compliant Web pages, Web sites and Web applications will be brought into compliance with the specifications and standards of this chapter.

(c) The department shall develop and publish a standard operating procedure to manage agency non-compliance identified through a survey, including a process for corrective action plan.

(d) Each state agency shall appoint an accessibility coordinator to develop, support and maintain their internal accessibility policy.

§206.54. State Web Site Link and Privacy Policy.

The following outlines the policies for linking to, using [~~the use of~~], or copying information from state agency Web sites and protecting the personal information of members of the public who access state agency information through a state agency Web site. It also requires that state agencies link to the policy.

(1) Requirements Applicable to Those Linking to State Agency Web Sites.

(A) Linking to State Agency Web Sites. Organizations and individuals (the site owner) are encouraged to link to state agency information. Advance permission is not required before linking. Links should be made using the appropriate base uniform resource locator (URL) [~~URL of www.agency-identifier.state.tx.us or such other URL as the agency may use~~]. Because state agencies may change subpages at any time without notice, the site owner should routinely verify links to state agency subpages.

(B) What State Agency and Institution of Higher Education Site Owners May Not Do in Linking to State Agency Web Sites.

(i) Site owners may not capture state agency pages within the site owner's frames, present state agency Web site content as that of the site owner, otherwise misrepresent the content of the state agency pages or misinform users about the origin or ownership of the content of the state agency Web site.

(ii) Any link to a state agency site should be a full forward link that passes the client browser to the state agency site unencumbered.

(iii) The BACK button should return the visitor to the site owner's site if the visitor wishes to back out.

(iv) Although the content of state agency Web sites is available to the public, certain information on some state agency Web sites may be trademarked, service marked, or otherwise protected as the state agency's intellectual property, and all agency content is protected by federal copyright laws. Use of protected intellectual property must be in accordance with federal and state law and must reflect the copyright, trademark, service mark or other intellectual property ownership of the state agency.

(v) Site owners should not link to individual state agency graphics or tables within state agency pages, especially in an effort to place the downloading burden on the state agency servers. Such an action may be considered a misuse of state resources. Site owners should contact the appropriate state agency to request permission to use a copy of the state agency's graphics within the site owner's pages.

(C) Accessibility. Owners of sites linked to state agency pages shall use reasonable efforts to ensure that persons with disabilities may access these sites.

(D) Copying and Use of Information by Web Site Owners Linking to State Agency Sites.

(i) The information posted on a state agency Web site may be copied so long as it is presented in a non-misleading way and does not imply that either the site owner or the information, as it is presented on the site owner's Web site, is endorsed by the State.

(ii) Use of the information must identify the state agency that is the source of the information, its Web address, the date the information was copied from the state agency's Web site by the site owner and must be accompanied by a statement that neither the site owner nor the information, as it is presented on the site owner's Web site, is endorsed by the State or any state agency.

(iii) A state agency may not charge a fee to access, use or reproduce information on its Web site or to link to information on its Web site, unless specifically authorized to do so by the Texas Legislature.

(iv) To protect the intellectual property of state agencies, copied information must reflect the copyright, trademark, service mark or other intellectual property rights of the state agency whose protected information is being used by the site owner.

(E) Links From a State Agency Web Site.

(i) A state agency that only provides links to other state agencies and institutions of higher education will post a link to this State Web Site Link and Privacy Policy.

(ii) A state agency that provides links to private Web sites shall publish a linking policy that includes its standards and criteria for linking to the private Web site.

(iii) State agencies are strongly encouraged to publish a disclaimer policy that specifically disclaims liability and responsibility for private Web site content.

(iv) State agencies that link to private Web sites will post a link to this State Web Site Link and Privacy Policy from the Web page that identifies their specific policies.

(2) Protection of the Privacy Rights of Individuals by Non-Judiciary State Governmental Bodies.

(A) Under Texas law, Chapter 559, Texas Government Code, unless a state governmental body, other than a state governmental body that is part of the judiciary, is allowed to withhold requested information from an individual pursuant to Chapter 552, Texas Government Code (the Texas Public Information Act), the individual is entitled to be informed about information collected by the state governmental body about that individual.

(B) Each non-judiciary state governmental body that collects information about an individual by means of a form that the individual completes and files with the state governmental body in a paper format or in an electronic format on an Internet site shall prominently state, on the paper form and prominently post on the state governmental body's Internet site in connection with the electronic form, that:

(i) with few exceptions, the individual is entitled on request to be informed about the information that the state governmental body collects about the individual;

(ii) the individual is entitled to receive and review the information; and

(iii) the individual is entitled to have the state governmental body correct incorrect information about the individual.

(C) Each non-judiciary state governmental body that collects information about an individual by means of an Internet site or that collects information about the computer network location or identity of a user of the Internet site shall prominently post on the state governmental body's Internet site:

(i) what information is being collected through the site about the individual; and

(ii) what information is being collected through the site about the computer network location or identity of a user of the state governmental body's Internet site, including what information is being collected by means that are not obvious.

(D) Each non-judiciary state governmental body must establish a reasonable procedure under which individuals may have incorrect information about them that is held by the state governmental body corrected. The correction procedure may not unduly burden the individual seeking to have information corrected.

(E) Each non-judiciary state governmental body shall identify its information collection practices and post that information in its Internet site privacy and security policy. The e-mail addresses of members of the public that are provided to non-judiciary state governmental bodies for electronic communication with state governmental bodies are confidential and may not be disclosed by state governmental bodies unless the affected member of the public affirmatively consents to the disclosure of his or her e-mail address.

(3) Requirements Applicable to State Agencies.

(A) With the exception of confidential information, information protected by laws designed to protect an individual's privacy interests, information that might assist terrorists or other malevolent actors in exploiting, creating or enhancing vulnerabilities and information not subject to disclosure under the Texas Public Information Act, state agencies are encouraged to post information on the Internet in an accessible format. Refer to guidelines in §206.50 of this chapter. [~~Information about the design and posting of information on state Web sites is available at http://www.dir.state.tx.us/standards/srrpub11.htm.~~]

(B) State agencies may not sell or release the e-mail addresses of members of the public that have been provided to communicate electronically with a government body without the affirmative consent of the affected member of the public.

§206.55. Linking and Indexing State Web Sites.

(a) All new or changed HTML documents on a state agency Web site that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission shall include the meta tags required by the Texas State Library and Archives Commission (13 TAC §3.9).

(b) The home page of a State Web Site, and key public entry points, shall include an "Accessibility" link to, or a "Site Policies" link to a Web page that contains the state agency's accessibility policy, site validation (e.g., Chapter 2054, Subchapter M, Texas Government Code), contact information for the agency's accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site.

(c) [~~(b)~~] The home page of a state Web site shall incorporate TRAIL metadata and shall:

(1) Provide links to the following State of Texas resources:

(A) Texas home page;

(B) Texas Homeland Security Web site;

(C) Link Policy, or the Site Policies page;

(D) TRAIL, Statewide Search Web site.

(2) Provide individual links to the following information, or to the Site Policies page with links to the following:

(A) Privacy and Security policy;

[~~(B) Accessibility policy;~~]

(B) [~~(C)~~] State agency contact [~~Contact~~] information;

(C) [~~(D)~~] Description of the Open Records/Public Information Act policy/procedures of the state agency;

(D) [~~(E)~~] Compact With [~~with~~] Texans.

(d) [~~(c)~~] All key public entry points shall provide a link to the following:

(1) Agency home page;

(2) Provide individual links to the following, or a link to the Site Policies page with links to the following:

(A) [~~(3)~~] State agency contact [~~Contact~~] information;

[~~(4) Accessibility policy;~~]

(B) [~~(5)~~] Privacy and Security policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-6124

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SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION WEB SITES

1 TAC §§206.70, 206.71, 206.74, 206.75

The amendments are proposed under §2054.052(a) and §2054.453, Texas Government Code.

No other statutes are affected by the proposal.

§206.70. Accessibility and Usability of Institution of Higher Education Web Sites.

(a) Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this title, all new or changed Web pages/content shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications: [~~Each institution of higher education shall develop and publish an accessibility policy for its Web site and/or Web pages that addresses the following:~~]

[~~(1) Effective September 1, 2006, unless an exception is approved by the president or chancellor of the institution of higher education, pursuant to §2054.460, Government Code, all new or re-~~

~~designed Web pages/content shall comply with the following Texas Web accessibility standards/specifications, where applicable:~~]

(1) [~~(A)~~] A text equivalent for every non-text element shall be provided (e.g., via "alt," "longdesc," or in element content).

(2) [~~(B)~~] Upon receiving a request for accommodation of a Web cast of an open meeting (as defined in the Open Meetings Act, Chapter 551, Texas Government Code) or of training/informational video productions which support the institution of higher education's mission, each institution of higher education which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Texas Government Code. Refer to §206.1 of this chapter for definitions for Alternate Format and Alternate Methods. [~~(Examples of different technologies and forms of accommodation and additional information for institutions of higher education to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from http://www.dir.state.tx.us.)~~]

(3) [~~(C)~~] Web pages shall be designed so that all information conveyed with color is also available without color.

(4) [~~(D)~~] Documents shall be organized so they are readable without requiring an associated style sheet.

(5) [~~(E)~~] Redundant text links shall be provided for each active region of a server-side image map.

(6) [~~(F)~~] Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.

(7) [~~(G)~~] Row and column headers shall be identified for data tables.

(8) [~~(H)~~] Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.

(9) [~~(I)~~] Frames shall be titled with text that facilitates frame identification and navigation.

(10) [~~(J)~~] Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(11) [~~(K)~~] An alternative version [~~A text only~~] page, with equivalent information or functionality, shall be provided to make a Web site comply with the provisions of this section, when compliance cannot be accomplished in any other way. The content of the alternative [~~text-only~~] page shall be updated whenever the primary page changes.

(12) [~~(L)~~] When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by assistive technology.

(13) [~~(M)~~] When a Web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with the following:

(A) [~~(i)~~] When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(B) [~~(ii)~~] Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(C) [~~(iii)~~] A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(D) [~~(iv)~~] Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(E) [~~(v)~~] When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(F) [~~(vi)~~] Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(G) [~~(vii)~~] Applications shall not override user selected contrast and color selections and other individual display attributes.

(H) [~~(viii)~~] When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(I) [~~(ix)~~] Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(J) [~~(x)~~] When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(K) [~~(xi)~~] Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(L) [~~(xii)~~] When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(14) [~~(N)~~] When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(15) [~~(O)~~] A method shall be provided that permits users to skip repetitive navigation links.

(16) [~~(P)~~] When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(b) Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this title, all new Web page/site designs shall be tested by the institution of higher education using one or more §508 compliance tools in conjunction with manual procedures to validate compliance

with this chapter. Institutions of higher education shall establish policies to monitor their Web site for compliance with this chapter. Additional information about testing tools and resources are available from the department's Web site.

[(2) Effective September 1, 2006, unless an exception is approved by the president or chancellor of the institution of higher education pursuant to §2054.460, Government Code, new Web page/site designs shall be tested by the institution of higher education using one or more §508 compliance tools in conjunction with manual procedures to validate compliance with the Texas Web accessibility standards. Institutions of higher education shall establish policies to monitor their Web site for compliance with the Texas Web accessibility standards. Additional information about testing tools and resources are in the State Web Site Guidelines that are available from http://www.dir.state.tx.us.]

(c) [(3)] Each state Web site shall avoid vendor specific "non-standard" extensions and shall comply with applicable standards (e.g., IEFT (if using secure socket layer (SSL) connections), W3C (if using Cascading Style Sheets (CSS) and validated using the W3C CSS Validation Service), etc. For guidance regarding "non-standard" extensions, emerging technologies and applicable standards, state agencies shall refer to the department's guidelines [available at http://www.dir.state.tx.us].

(d) [(4)] The policy should cover testing and validation of Web pages.

(e) [(5)] Each state Web site should be designed with consideration for the types of Internet connections available to the citizens of Texas, and undergo accessibility and usability testing.

(f) [(6)] Testing/validation tools and manual procedures for validating [§508 compliance satisfy] compliance with Chapter 2054, Subchapter M, Texas Government Code [the Texas Web accessibility standards].

[(7) All institutions of higher education shall participate in the survey and should participate in the training identified by the department in the State Web Site guidelines available at http://www.dir.state.tx.us. As a minimum, Web content providers/developers should understand the requirements for complying with §508 requirements for the following:]

[(A) Text Alternatives for non-text content.]

[(B) Checking for Accessibility.]

[(C) Accessible Navigation.]

[(D) Image maps.]

[(E) Audio & Multimedia.]

[(F) Accessible Forms.]

[(G) Accessible Tables.]

[(H) Scripts and Applets.]

[(I) Using Style Sheets.]

[(8) The lack of commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on institutions of higher education are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from http://www.dir.state.tx.us.]

§206.71. Accessibility Policy and Coordinator.

(a) Each institution of higher education shall develop and publish an accessibility policy, by June 30, 2009, which includes the standards and specifications of this chapter. [The home page of an institution of higher education Web site, and key public entry points, shall include an "Accessibility" link to, or a "Site Policies" link to a Web page that contains the institution of higher education accessibility policy, site validation (e.g., §508), contact information for the accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site.]

(b) Each institution of higher education's accessibility policy shall include a plan by which all non-compliant Web pages, Web sites and Web applications will be brought into compliance with the specifications and standards of this chapter.

(c) The department shall develop and publish a standard operating procedure to manage agency non-compliance identified through a survey, including a process for corrective action plan.

(d) Each institution of higher education shall appoint an accessibility coordinator to develop, support and maintain their internal accessibility policy.

§206.74. State Web Site Link and Privacy Policy.

The following outlines the policies for linking to, using [the use of], or copying information from institution of higher education Web sites and protecting the personal information of members of the public who access information through an institution of higher education Web site. It also requires that institutions of higher education link to the policy.

(1) Requirements Applicable to Those Linking to Institution of Higher Education Web Sites.

(A) Linking to Institution of Higher Education Web Sites. Organizations and individuals (the site owner) are encouraged to link to institution of higher education information. Advance permission is not required before linking. Links should be made using the appropriate base uniform resource locator (URL) [URL of www.institution of higher education-identifier.edu or state.tx.us or such other URL as the institution of higher education may use]. Because institutions of higher education may change subpages at any time without notice, the site owner should routinely verify links to institution of higher education subpages.

(B) What State Agency and Institution of Higher Education Site Owners May Not Do in Linking to Institution of Higher Education Web Sites.

(i) Site owners may not capture institution of higher education pages within the site owner's frames, present institution of higher education Web site content as that of the site owner, otherwise misrepresent the content of the institution of higher education pages or misinform users about the origin or ownership of the content of the institution of higher education Web site.

(ii) Any link to an [a] institution of higher education site should be a full forward link that passes the client browser to the institution of higher education site unencumbered.

(iii) The BACK button should return the visitor to the site owner's site if the visitor wishes to back out.

(iv) Although the content of institution of higher education Web sites is available to the public, certain information on some institution of higher education Web sites may be trademarked, service marked, or otherwise protected intellectual property of the institution of higher education. All content is protected by federal copyright laws. Use of protected intellectual property must be in accordance with federal and state law and must reflect the copyright, trademark, service mark or other intellectual property ownership of the institution of higher education.

(v) Site owners should not link to individual institution of higher education graphics or tables within institution of higher education pages, especially in an effort to place the downloading burden on the institution of higher education servers. Such an action may be considered a misuse of state resources. Site owners should contact the appropriate institution of higher education to request permission to use a copy of the institution of higher education's graphics within the site owner's pages.

(C) Accessibility. Owners of sites linked to institution of higher education pages shall use reasonable efforts to ensure that persons with disabilities may access these sites.

(D) Copying and Use of Information by Web Site Owners Linking to Institution of Higher Education Web Sites.

(i) Much of the information posted on institution of higher education Web sites is owned by the individual who posts it rather than by the institution of higher education, pursuant to the institution of higher education's intellectual property policies. Whether information is owned by the institution of higher education or by an individual, permission should be obtained from the content owner for any use beyond fair use.

(ii) Such materials may only be used in accordance with any limitations requested by the owner.

(E) Links from an Institution of Higher Education Web Site.

(i) An institution of higher education that only provides links to other institutions of higher education and state agencies will post a link to this State Web Site Link and Privacy Policy.

(ii) An institution of higher education that provides links to private Web sites shall publish a linking policy that includes its standards and criteria for linking to the private Web site. Institutions of higher education are strongly encouraged to publish a disclaimer policy that specifically disclaims liability and responsibility for private Web site content. Institutions of higher education that link to private Web sites will post a link to this State Web Site Link and Privacy Policy from the Web page that identifies their specific policies.

(2) Protection of the Privacy Rights of Individuals by Non-Judiciary State Governmental Bodies.

(A) Under Texas law, Chapter 559, Texas Government Code, unless a state governmental body, other than a state governmental body that is part of the judiciary, is allowed to withhold requested information from an individual pursuant to Chapter 552, Texas Government Code (the Texas Public Information Act), the individual is entitled to be informed about information collected by the state governmental body about that individual.

(B) Each institution of higher education that collects information about an individual by means of a form that the individual completes and files with the institution of higher education in a paper format or in an electronic format on an Internet site shall prominently state, on the paper form and prominently post on its Internet site in connection with the electronic form, that:

(i) with few exceptions, the individual is entitled on request to be informed about the information that collected about the individual;

(ii) the individual is entitled to receive and review the information; and

(iii) the individual is entitled to have the institution of higher education correct incorrect information about the individual.

(C) Each institution of higher education that collects information about an individual by means of an Internet site or that collects information about the computer network location or identity of a user of the Internet site shall prominently post on its Internet site:

(i) what information is being collected through the site about the individual; and

(ii) what information is being collected through the site about the computer network location or identity of a user of the Internet site, including what information is being collected by means that are not obvious.

(D) Each institution of higher education must establish a reasonable procedure under which individuals may have incorrect information about them corrected. The correction procedure may not unduly burden the individual seeking to have information corrected.

(E) Each institution of higher education shall identify its information collection practices and post that information in its Internet site privacy and security policy. The e-mail addresses of members of the public that are provided to institutions of higher education for electronic communication are confidential and may not be disclosed by the institution of higher education unless the affected member of the public affirmatively consents to the disclosure of his or her e-mail address.

(3) Requirements Applicable to Institutions of Higher Education.

(A) With the exception of confidential information, information protected by laws designed to protect an individual's privacy interests, information that might assist terrorists or other malevolent actors in exploiting, creating or enhancing vulnerabilities, and information not subject to disclosure under the Texas Public Information Act, institutions of higher education are encouraged to post information on the Internet in an accessible format. Refer to guidelines in §206.70 of this chapter. [~~Information about the design and posting of information on state Web sites is available at http://www.dir.state.tx.us/standards/srrpub11.htm.~~]

(B) Institutions of higher education may not sell or release the e-mail addresses of members of the public that have been provided to communicate electronically with the institution of higher education without the affirmative consent of the affected member of the public.

§206.75. Linking and Indexing State Web Sites.

(a) All new or changed HTML documents on an institution of higher education Web site that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission shall include the meta tags required by the Texas State Library and Archives Commission (13 TAC §3.9).

(b) The home page of a State Web Site, and key public entry points, shall include an "Accessibility" link to, or a "Site Policies" link to a Web page that contains the institution of higher education's accessibility policy, site validation (e.g., Chapter 2054, Subchapter M, Texas Government Code), contact information for the institution of higher education's accessibility coordinator, and a link to the Governor's Committee on People with Disabilities Web site.

(c) [~~(b)~~] The home page of each institution of higher education Web site shall incorporate TRAIL metadata and shall:

(1) Provide links to the following State of Texas resources:

(A) Texas home page;

(B) Texas Homeland Security Web site;

(C) Link Policy, or the Site Policies page;

(D) TRAIL, Statewide Search Web site.

(2) Provide individual links to the following institution of higher education information, or to the Site Policies page with links to the following:

(A) Privacy and Security policy;

[~~(B) Accessibility policy;~~]

(B) [~~(C)~~] Institution of higher education contact information;

(C) [~~(D)~~] Description of the Open Records/Public Information Act policy/procedures of the institution of higher education;

(D) [~~(E)~~] Compact With [~~with~~] Texans.

(d) [~~(c)~~] All key public entry points shall provide links to the following:

(1) Institution of higher education home page;

(2) Provide individual links to the following institution of higher education information, or to the Site Policies page with links to the following:

(A) [~~(3)~~] Institution of higher education contact information;

[~~(4) Accessibility policy;~~]

(B) [~~(5)~~] Privacy and Security policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802704
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-6124

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CHAPTER 213. ELECTRONIC AND INFORMATION RESOURCES

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 213, §§213.1, 213.10 - 213.17, and 213.30 - 213.37; and new §§213.18 - 213.21 and §§213.38 - 213.41, concerning Electronic and Information Resources. The proposed changes include the addition of new definitions and the modification of some existing definitions in §213.1; a requirement in §213.21 and §213.41, respectively, that each agency and institution of higher education must develop and publish an accessibility policy by June 30, 2009. The rules require that the accessibility policy include a plan for non-compliance remediation, the department to develop and publish a procedure to manage non-compliance, and agencies and institutions of higher education to appoint an accessibility coordinator. The proposed changes include a clarification at the beginning of 1 TAC §§213.10 - 213.16 and 1 TAC §§213.30 - 213.36 stating that unless an exception is approved by the agency's executive director or an exemption has been made for specific technologies under §213.17 or §213.37 of this chapter, effective September 1, 2006, all electronic and information resources developed, procured or changed by the state agency or institution of higher education must comply with the requirements of these rules. The proposed changes also include new §213.19 and §213.39 concerning accessibility training and technical assistance; and new §213.20 and §213.40, concerning accessibility surveys and reporting requirements. The proposed changes implement requirements of Texas Government Code, Chapter 2054, Subchapter M, Access to Electronic and Information Resources by Individuals With Disabilities.

The department proposes to change the title of Subchapter B from "Electronic and Information Resources for State Agencies" to "Accessibility Standards for State Agencies" and Subchapter C from "Electronic and Information Resources for Institution of Higher Education" to "Accessibility Standards for Institutions of Higher Education" to clarify that the rules are the accessibility standards for electronic and information resources. The changes to the proposed rules apply to both state agencies and institutions of higher education.

1 TAC §213.1, Applicable Terms and Technologies for Electronic and Information Resources

In §213.1 the department proposes to add the following definitions because of new or revised content in 1 TAC Chapter 213: "Commercially unavailable", "Exception", "Exemption", and "Training/Technical Assistance".

The definition of "Information Technology" was broadened for clarification.

1 TAC §§213.10 - 213.16 (Electronic and Information Resources for State Agencies) and §§213.30 - 213.36 (Electronic and Information Resources for Institution of Higher Education)

The following change was made to §§213.10 - 213.16 (for state agencies) and §§213.30 - 213.36 (for institution of higher education):

An introductory paragraph is added to each section providing for compliance with the rules unless an exception has been granted by an agency's executive director or the president or chancellor of an institution of higher education or an exemption has been granted by the department. The paragraph references the requirements in proposed 1 TAC §213.17 and §213.37, Compliance Exceptions and Exemptions.

1 TAC §213.17 and §213.37, State Agency Application/Institution of Higher Education Application

The department proposes a revision to the title of §213.17 and §213.37 from "State Agency Application/Institution of Higher Education Application" to "Compliance Exceptions and Exemptions". Pursuant to §2054.460(d), Texas Government Code, Exception for Significant Difficulty or Expense, and §2054.461, Texas Government Code, Exemptions, the department is granted the authority to adopt rules regarding the exemption of electronic and information technology resources from the standards and specifications related to accessibility. The proposed rule lists requirements to guide state agencies on how to request and document exceptions and exemptions. The department proposes that this revised rule replace existing 1 TAC §213.17, State Agency Application, and 1 TAC §213.37, Institutions of Higher Education Application. The department proposes to delete the existing rule and move parts of it to 1 TAC §213.18 and §213.38, Procurements.

The department proposes to add the following new sections:

1 TAC §213.18 and §213.38, Procurements.

Pursuant to §2054.453 (a), Texas Government Code, Compliance With Federal Standards and Laws, the department is granted the authority to adopt rules and evaluation criteria, including rules regarding: (1) the development, procurement, maintenance, and use of electronic and information resources by state agencies to provide access to individuals with disabilities; and (2) a procurement accessibility policy. The content regarding procurement for the proposed rules was moved from the existing 1 TAC §213.17, State Agency Application, and 1 TAC §213.37, Institutions of Higher Education Application. The proposed rule also allows state agencies and institutions of higher education to comply with an internal procurement policy as an alternative to the requirement to use the Voluntary Product Accessibility Template (VPAT) or the Accessibility Wizard.

1 TAC §213.19 and §213.39, Accessibility Training and Technical Assistance.

Pursuant to §2054.452, Texas Government Code, Training and Technical Assistance, the department is granted the authority to provide training and technical assistance to state agencies and institutions of higher education regarding accessibility compliance, and to adopt rules to implement this section. The proposed rules provide for roles and responsibilities of the department, state agencies and institutions of higher education in providing accessibility training.

1 TAC §213.20 and §213.40, Accessibility and Reporting Requirement.

Pursuant to §2054.464, Texas Government Code, Survey; Reporting Requirements, the department is granted the authority to adopt guidelines regarding: (1) an electronic and information resources state agency survey; and (2) state agency reporting requirements for implementation of this subchapter. The proposed rule addresses the requirement that the department conduct an electronic and information resources survey to determine state agencies' and institutions of higher education's compliance with 1 TAC Chapter 206 and Chapter 213 requirements.

1 TAC §213.21 and §213.41, Accessibility Policy and Coordinator.

Accessibility is related to both information technology and Web site rules. Because some people may not have a need to look at the rules in 1 TAC Chapter 206 regarding Accessibility Standards for State Web Sites, the requirements for the accessibility policy and accessibility coordinator are also proposed for 1 TAC §213.21 and §213.41, Accessibility Policy and Coordinator.

The department proposes to add new subsections (a) - (c) regarding Accessibility policy requirements.

The department proposes to add a new subsection (d) adding the requirement for an Accessibility Coordinator for state agencies and institutions of higher educations.

IMPACT ON STATE AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

The rule changes should have a minimal impact because most of the requirements for the rules became law on September 1, 2006. Some comments of concern have been expressed about the cost of bringing Web pages and PDF documents into compliance. This is already a requirement of the existing rules in 1 TAC Chapter 206. The only significant new requirement is set forth in 1 TAC §§206.51, 206.71, 213.21 and 213.41, Accessibility Policy and Coordinator, which require each agency and institution of higher education to have an accessibility coordinator. The impact will vary depending on if the agency or institution of higher education already has someone on staff in that position or if they have to hire someone. The estimated cost for hiring someone for the position is stated in the fiscal note below.

Because the proposed rules apply to institutions of higher education, the department, in consultation with the Information Technology Council for Higher Education, prepared an analysis of the impact of the rules that included consideration of the requirements in Chapter 2054, Subchapter M, Texas Government Code. Issues and concerns regarding the potential impact of the rules on higher education and student populations were identified, including: (1) the proposed rules require certain approvals by the agency head. Institutions of higher education requested that exceptions be approved by someone other than the head of the institution; (2) the term "Web page" should be clarified; (3) change the proposed 1 TAC §213.38 to allow institutions of higher education to comply with an internal procurement policy as an alternative to the requirement to use the Voluntary Product Accessibility Template (VPAT) or the Accessibility Wizard; and (4) certain other definitions should be revised. The department proposed alternatives to address the issues, which were acceptable to the Information Technology Council for Higher Education, including: (1) explaining that approval of exceptions by the institution of higher education's president or chancellor was statutorily required, but could be addressed by internal policies and procedures; (2) revising the term "Web page"; (3) allowing institutions of higher education to comply with an internal procurement policy as an alternative to being required to use the VPAT or the Accessibility Wizard as originally proposed in 1 TAC §213.38; and (4) changing certain definitions.

FISCAL NOTE

Ginger Salone, Deputy Executive Director of Statewide Technology Service Delivery, has determined that for the first five-year period the rules are in effect, the fiscal impact to state agencies and institutions of higher education is approximately $11 million. This cost is related to the change in rule that requires state agencies and institutions of higher education to designate an Accessibility Coordinator for their agencies. Sixty two agencies have indicated they do not currently have an Accessibility Coordinator designated. Depending on the size of the agency, the department estimates that the requirements of this position will vary from fifteen percent of a full-time equivalent (FTE) for agencies with less than 100 FTEs, a total of $1.1 million; fifty percent of an FTE for agencies with less than 1,000 FTEs, a total of $4 million; and one hundred percent of an FTE for agencies with 1,000 FTEs and greater, a total of $5.9 million.

PUBLIC BENEFIT

The department is committed to making electronic and information resources usable by people of all abilities and disabilities. The department worked in collaboration with other government entities to develop these proposed rule changes. Ms. Salone has determined that for each year of the first five years the proposed rules are in effect the public benefits anticipated as a result of enforcing or administering the rules will be that all users of electronic and information resources covered by these rules will have equal access to state government. There are no anticipated economic costs to persons or small businesses required to comply with the proposed rules.

Comments on the proposed amendments and new rules may be submitted to Martin Zelinsky, Assistant General Counsel, De-

partment of Information Resources, 300 West 15th Street, Suite 1300, Austin, Texas 78701, martin.zelinsky@dir.state.tx.us, for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

1 TAC §213.1

The amendments are proposed under §2054.052(a) and §2054.453, Texas Government Code.

No other statutes are affected by this proposal.

§213.1. Applicable Terms and Technologies for Electronic and Information Resources.

The following words and terms, when used with this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Alternate formats--Alternate formats usable by people with disabilities may include, but are not limited to, Braille, ASCII text, large print, recorded audio, and electronic formats that comply with this chapter.

(2) Alternate methods--Different means of providing information, including product documentation, to people with disabilities. Alternate methods may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

(3) Assistive technology--Any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(4) Buy Accessible Wizard--A Web-based [~~web-based~~] application (http://www.buyaccessible.gov) that guides users through a process of gathering data and providing information about Electronic and Information Resources and §508 compliance, or other tools/resources developed by or for the Federal Government to indicate product/service compliance with the Section 508 standards (http://www.section508.gov).

(5) Commercially unavailable--An electronic or information resource for a specific function or business area that is not available in the commercial marketplace for purchase or development.

(6) [~~(5)~~] Electronic and information resources--Includes information technology and any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, [~~or~~] duplication, or delivery of data or information. The term electronic and information resources includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

(7) [~~(6)~~] Electronic and information resources accessibility standards--Texas accessibility standards for Electronic and Information Resources that comply with the applicable specifications contained in Subchapter B, §§213.10 - 213.16 of this chapter for state agencies and Subchapter C, §§213.30 - 213.36 of this chapter for institutions of higher education.

(8) Exception--A justified, documented non-conformance with one or more standards or specifications of Chapter 206 and/or Chapter 213 of this title, which has been approved by the Executive Director of an Agency or the President or Chancellor of an Institution of Higher Education.

(9) Exemption--A justified, documented non-conformance with one or more standards or specifications of Chapter 206 and/or Chapter 213 of this title, which has been approved by the department and which is applicable statewide.

(10) [~~(7)~~] Information technology--Any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term includes computers (including desktop and laptop computers), ancillary equipment, desktop software, client-server software, mainframe software, Web application software and other types of software, firmware and similar procedures, services (including support services), and related resources.

(11) [~~(8)~~] Operable controls--A component of a product that requires physical contact for normal operation. Operable controls include, but are not limited to, mechanically operated controls, input and output trays, card slots, keyboards, and keypads.

(12) [~~(9)~~] Product--Electronic and information technology.

(13) [~~(10)~~] Self Contained, Closed Products--Products that generally have embedded software and are commonly designed in such a fashion that a user cannot easily attach or install assistive technology. These products include, but are not limited to, information kiosks and information transaction machines, copiers, printers, calculators, fax machines, and other similar products.

(14) [~~(11)~~] Telecommunications--The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(15) Training/Technical Assistance--Accessibility training and technical assistance for Web content providers/developers on compliance with the accessibility standards.

(16) [~~(12)~~] TTY--An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the telephone network. TTYs may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.

(17) [~~(13)~~] Voluntary Product Accessibility Template (VPAT)--A Web based summary to assist contracting officials and other buyers in making preliminary assessments regarding the availability of commercial Electronic and Information Resources products and services with features that support accessibility. The VPAT forms and additional information are available at http://www.section508.gov.

(18) [~~(14)~~] Web Accessibility Standards--Texas Web accessibility standards for Web pages/content that comply with the applicable specifications contained in Chapter 206, Subchapter B, §206.50(1) of this title for state agencies and Chapter 206, Subchapter C, §206.70(1) of this title for institutions of higher education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

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Renée Mauzy
General Counsel
Department of Information Resources
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For further information, please call: (512) 463-6124

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SUBCHAPTER B. ACCESSIBILITY STANDARDS FOR STATE AGENCIES

1 TAC §§213.10 - 213.21

The amendments and new sections are proposed under §2054.052(a) and §2054.453, Texas Government Code.

No other statutes are affected by the proposal.

§213.10. Software Applications and Operating Systems.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(2) [~~(b)~~] Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(3) [~~(c)~~] A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(4) [~~(d)~~] Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(5) [~~(e)~~] When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(6) [~~(f)~~] Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(7) [~~(g)~~] Applications shall not override user selected contrast and color selections and other individual display attributes.

(8) [~~(h)~~ When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(9) [~~(i)~~] Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(10) [~~(j)~~] When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(11) [~~(k)~~] Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(12) [~~(l)~~] When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

§213.11. Telecommunications Products.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.

(2) [~~(b)~~] Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.

(3) [~~(c)~~] Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.

(4) [~~(d)~~] Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.

(5) [~~(e)~~] Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.

(6) [~~(f)~~] For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.

(7) [~~(g)~~] If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.

(8) [~~(h)~~] Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.

(9) [~~(i)~~] Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.

(10) [~~(j)~~] Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.

(11) [~~(k)~~] Products which have mechanically operated controls or keys, shall comply with the following:

(A) [~~(1)~~] Controls and keys shall be tactilely discernible without activating the controls or keys.

(B) [~~(2)~~] Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2 N) maximum.

(C) [~~(3)~~] If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.

(D) [~~(4)~~] The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.

§213.12. Video and Multimedia Products.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(2) [~~(b)~~] Upon receiving a request for accommodation of a Web cast of training/informational video productions which support the agency's mission, each state agency which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Texas Government Code. [~~(Examples of different technologies and forms of accommodation and additional information for state agencies to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from http://www.dir.state.tx.us.)~~]

§213.13. Self Contained, Closed Products.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] Self contained products shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.

(2) [~~(b)~~] When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(3) [~~(c)~~] Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with Telecommunications products in §213.11(11)(A) - (D) [~~§213.11(k)(1) - (4)~~] of this subchapter.

(4) [~~(d)~~] When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(5) [~~(e)~~] When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.

(6) [~~(f)~~] When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(7) [~~(g)~~] Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(8) [~~(h)~~] When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.

(9) [~~(i)~~] Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(10) [~~(j)~~] Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:

(A) [~~(1)~~] The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length.

(B) [~~(2)~~] Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.

(C) [~~(3)~~] Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.

(D) [~~(4)~~] Operable controls shall not be more than 24 inches behind the reference plane.

§213.14. Desktop and Portable Computers.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] All mechanically operated controls and keys shall comply with Telecommunications products in §213.11(11)(A) - (D) [~~§213.11(k)(1) - (4)~~] of this subchapter.

(2) [~~(b)~~] If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with

Telecommunications products in §213.11(11)(A) - (D) [~~§213.11(k)(1) - (4)~~] of this subchapter.

(3) [~~(c)~~] When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(4) [~~(d)~~] Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards.

§213.15. Functional Performance Criteria.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.

(2) [~~(b)~~] At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.

(3) [~~(c)~~] At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.

(4) [~~(d)~~] Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.

(5) [~~(e)~~] At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.

(6) [~~(f)~~] At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.

§213.16. Information, Documentation, and Support.

Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.

(2) [~~(b)~~] End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.

(3) [~~(c)~~] Support services for products shall accommodate the communication needs of end-users with disabilities.

§213.17. Compliance Exceptions and Exemptions [~~State Agency Application~~].

Effective September 1, 2006, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards and specifications of Chapter 206 and/or Chapter 213 of this title, unless an exception is approved by the executive director of the agency, or an exemption is granted by the department.

(1) Each state agency shall include in its accessibility policy standards and processes for handling exception requests.

(2) An exception request shall be submitted to the executive director of an agency for each development or procurement, including outsourced development, which does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to §2054.460, Texas Government Code.

(3) An approved exception shall include the following:

(A) a date of expiration;

(B) a plan for alternate means of access for persons with disabilities;

(C) the exception including relevant cost avoidance estimates; and

(D) signature of the executive director of the agency.

(4) Agencies shall maintain records of exception requests according to that agency's internal accessibility policy.

(5) The department shall establish and maintain a list of electronic and information technology resources which are determined to be exempt from the standards and specifications of all or part of Chapter 206 and/or Chapter 213 of this title.

(6) The list of exempt electronic and information resources will be posted under the Accessibility section of the department's Web site.

(7) The following information shall be provided for each exemption listed:

(A) a date of expiration;

(B) a plan for alternate means of access for persons with disabilities; and

(C) justification for the exemption including relevant cost avoidance estimates.

(8) The department shall establish and publish a policy under the Accessibility section of its Web site which defines the procedures and standards used to determine which electronic or information resources are exempt from the standards and specifications described in Chapter 206 and/or Chapter 213 of this title.

[~~(a) As of September 1, 2006, unless an exception is approved by the executive director of the state agency pursuant to §2054.460, Government Code, all electronic and information resources products developed or procured by a state agency for each project begun after August 31, 2006, shall comply with the applicable provisions of this subchapter, unless it would impose a significant difficulty or expense for the state agency. The lack of the commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on state agencies are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from http://www.dir.state.tx.us.~~]

[~~(1) When compliance with the provisions of this subchapter imposes a significant difficulty or expense, state agencies shall~~

provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.]

[(2) When procuring a product, if a state agency determines that compliance with any provision of this subchapter imposes a significant difficulty or expense, the documentation by the state agency supporting the procurement shall explain why, and to what extent, compliance with each such provision would impose a significant difficulty or expense.]

[(b) When procuring a product, each state agency shall procure products which comply with the provisions in this subchapter when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.]

[(1) State agencies may use the Voluntary Product Accessibility Template (VPAT) to assess the availability of products in the commercial marketplace.]

[(2) State agencies may use the Buy Accessible Wizard to assess compliance with the provisions of this subchapter.]

[(c) This subchapter applies to electronic and information resources developed, procured, maintained, or used by agencies directly or used by a contractor under a contract with an agency which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.]

[(d) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.]

§213.18. Procurements.

(a) The department, in establishing commodity procurement contracts for state agencies and institutions of higher education, and in compliance with the State of Texas Accessibility requirements (based on the federal standards established under §508 of the Rehabilitation Act), shall require vendors make accessibility information available for every product under contract through one of the following methods:

(1) the URL to a completed Voluntary Product Accessibility Template (VPAT) (http://www.access-star.org/ITI-VPAT-v1.2.html);

(2) the URL to the product accessibility information available from the General Services Administration "Buy Accessible Wizard" (http://www.buyaccessible.gov);

(3) an electronic document that addresses the same accessibility criteria in substantively the same format as the VPAT (http://www.access-star.org/ITI-VPAT-v1.2.html); or

(4) The URL to a Web page which explains how to request a completed VPAT for any product under contract.

(b) Each state agency shall include in its accessibility policy standards and processes for making agency procurement decisions pursuant to §2054.453, Texas Government Code.

(1) Unless an exception is approved by the executive director of the state agency pursuant to §2054.460, Texas Government Code, and §213.17 of this chapter, or unless an exemption is approved by the department, pursuant to §2054.460, Texas Government Code, and §213.17 of this chapter, all electronic and information resources products developed, procured or changed through a procured services contract, and all electronic and information resource services provided through hosted or managed services contracts, shall comply with the provisions of Chapter 206 and Chapter 213 of this title, as applicable.

(2) Agencies may develop a procurement accessibility policy for making procurement decisions. Such policy must be approved by the executive director. In the absence of an approved procurement accessibility policy, the agencies shall use either the Voluntary Product Accessibility Template (VPAT) or the Buy Accessible Wizard to assess the degree of accessibility of a given product when making procurement decisions according to the agency's accessibility policy.

(3) This subchapter applies to electronic and information resources developed, procured, or changed by an agency, or developed, procured, or changed by a contractor under a contract with an agency which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(4) This subchapter does not apply to information technology that is acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract.

(5) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

§213.19. Accessibility Training and Technical Assistance.

The department shall provide training and technical assistance regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to §2054.452, Texas Government Code.

(1) The department shall schedule on-going training events or seminars, focused on accessibility development, testing, procurement and/or awareness training.

(2) The executive director of each agency should ensure appropriate staff receives training necessary to meet all accessibility-related rules.

(3) The department shall publish on its Web site, information regarding publicly available accessibility training opportunities and technical assistance.

§213.20. Accessibility Survey and Reporting Requirements.

(a) The department shall conduct an electronic and information resources survey regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to §2054.464, Texas Government Code.

(b) Each state agency shall be required to complete the accessibility survey within the prescribed deadline established by the department.

§213.21. Accessibility Policy and Coordinator.

(a) Each state agency shall develop and publish an accessibility policy, by June 30, 2009, which includes the standards and specifications of this chapter.

(b) Each state agency's accessibility policy shall include a plan by which all non-compliant Web pages, Web sites and Web applications will be brought into compliance with the specifications and standards of this chapter.

(c) The department shall develop and publish a standard operating procedure to manage agency non-compliance identified through a survey, including a process for corrective action plan.

(d) Each state agency shall appoint an accessibility coordinator to develop, support and maintain their internal accessibility policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

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Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-6124

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SUBCHAPTER C. ACCESSIBILITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§213.30 - 213.41

The amendments and new sections are proposed under §2054.052(a) and §2054.453, Texas Government Code.

No other statutes are affected by the proposal.

§213.30. Software Applications and Operating Systems.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all electronic and information resources developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(2) [~~(b)~~] Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(3) [~~(c)~~] A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(4) [~~(d)~~] Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(5) [~~(e)~~] When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(6) [~~(f)~~] Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(7) [~~(g)~~] Applications shall not override user selected contrast and color selections and other individual display attributes.

(8) [~~(h)~~] When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(9) [~~(i)~~] Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(10) [~~(j)~~] When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(11) [~~(k)~~] Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(12) [~~(l)~~] When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

§213.31. Telecommunications Products.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all electronic and information resources developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.

(2) [~~(b)~~] Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.

(3) [~~(c)~~] Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.

(4) [~~(d)~~] Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.

(5) [~~(e)~~] Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.

(6) [~~(f)~~] For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.

(7) [~~(g)~~] If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.

(8) [~~(h)~~] Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.

(9) [~~(i)~~] Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.

(10) [~~(j)~~] Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.

(11) [~~(k)~~] Products which have mechanically operated controls or keys, shall comply with the following:

(A) [~~(1)~~] Controls and keys shall be tactilely discernible without activating the controls or keys.

(B) [~~(2)~~] Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2 N) maximum.

(C) [~~(3)~~] If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.

(D) [~~(4)~~] The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.

§213.32. Video and Multimedia Products.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all electronic and information resources developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(2) [~~(b)~~] Upon receiving a request for accommodation of a Web cast of training/informational video productions which support the institution of higher education's mission, each institution of higher education which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Texas Government Code. [~~(Examples of different technologies and forms of accommodation and additional information for state agencies to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from http://www.dir.state.tx.us.)~~]

§213.33. Self Contained, Closed Products.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all electronic and information resources developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] Self contained products shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.

(2) [~~(b)~~] When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(3) [~~(c)~~] Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with Telecommunications products in §213.31(11)(A) - (D) [~~§213.31(k)(1) - (4)~~] of this subchapter.

(4) [~~(d)~~] When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(5) [~~(e)~~] When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.

(6) [~~(f)~~] When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(7) [~~(g)~~] Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(8) [~~(h)~~] When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.

(9) [~~(i)~~] Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(10) [~~(j)~~] Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:

(A) [~~(1)~~] The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length.

(B) [~~(2)~~] Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.

(C) [~~(3)~~] Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.

(D) [~~(4)~~] Operable controls shall not be more than 24 inches behind the reference plane.

§213.34. Desktop and Portable Computers.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37

of this chapter, all electronic and information resources developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] All mechanically operated controls and keys shall comply with Telecommunications products in §213.31(11)(A) - (D) [~~§213.31(k)(1) - (4)~~] of this subchapter.

(2) [~~(b)~~] If a product utilizes touchscreens or touch-operated controls, an input method shall be provided that complies with Telecommunications products in §213.31(11)(A) - (D) [~~§213.31(k)(1) - (4)~~] of this subchapter.

(3) [~~(c)~~] When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(4) [~~(d)~~] Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards.

§213.35. Functional Performance Criteria.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all electronic and information resources developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.

(2) [~~(b)~~] At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.

(3) [~~(c)~~] At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.

(4) [~~(d)~~] Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.

(5) [~~(e)~~] At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.

(6) [~~(f)~~] At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.

§213.36. Information, Documentation, and Support.

Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all electronic and information resources developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) [~~(a)~~] Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.

(2) [~~(b)~~] End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.

(3) [~~(c)~~] Support services for products shall accommodate the communication needs of end-users with disabilities.

§213.37. Compliance Exceptions and Exemptions [~~Institutions of Higher Education Application~~].

Effective September 1, 2006, all electronic and information resources developed, procured or changed by an institution of higher education shall comply with the standards and specifications of Chapter 206 and/or Chapter 213 of this title, unless an exception is approved by the president or chancellor of an institution of higher education, or an exemption is granted by the department.

(1) Each institution of higher education shall include in its accessibility policy standards and processes for handling exception requests.

(2) An exception request shall be submitted to the president or chancellor of an institution of higher education for each electronic and information resources development or procurement, including outsourced development, which does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to §2054.460, Texas Government Code.

(3) An approved exception shall include the following:

(A) a date of expiration;

(B) a plan for alternate means of access for persons with disabilities;

(C) justification for the exception including relevant cost avoidance estimates; and

(D) signature of the executive director of the agency.

(4) Institutions of higher education shall maintain records of exception requests according to that institution of higher education's internal accessibility policy.

(5) The department shall establish and maintain a list of electronic and information technology resources which are determined to be exempt from the standards and specifications of all or part of Chapter 206 and/or Chapter 213 of this title.

(6) The list of exempt electronic and information resources will be posted under the Accessibility section of the department's Web site.

(7) The following information shall be provided for each exemption listed:

(A) date of expiration;

(B) a plan for alternate means of access for persons with disabilities; and

(C) justification for the exemption including relevant cost avoidance estimates.

(8) The department shall establish and publish a policy under the Accessibility section of its Web site which defines the procedures and standards used to determine which electronic or information

resources are exempt from the standards and specifications described in Chapter 206 and/or Chapter 213 of this title.

~~[(a) As of September 1, 2006, unless an exception is approved by the president or chancellor of the institution of higher education pursuant to §2054.460, Government Code, all electronic and information resources products developed or procured by a the institution of higher education for each project begun after August 31, 2006, shall comply with the applicable provisions of this subchapter, unless it would impose a significant difficulty or expense for the institution of higher education. The lack of the commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on the institutions of higher education are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from http://www.dir.state.tx.us.]~~

~~[(1) When compliance with the provisions of this subchapter imposes a significant difficulty or expense, institutions of higher education shall provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.]~~

~~[(2) When procuring a product, if an institution of higher education determines that compliance with any provision of this subchapter imposes a significant difficulty or expense, the documentation by the institution of higher education supporting the procurement shall explain why, and to what extent, compliance with each such provision would impose a significant difficulty or expense.]~~

~~[(b) When procuring a product, each institution of higher education shall procure products which comply with the provisions in this subchapter when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation]~~ .

~~[(1) Institutions of higher education may use the Voluntary Product Accessibility Template (VPAT) to assess the availability of products in the commercial marketplace.]~~

~~[(2) Institutions of higher education may use the Buy Accessible Wizard to assess compliance with the provisions of this subchapter.]~~

~~[(c) This subchapter applies to electronic and information resources developed, procured, maintained, or used by an institution of higher education directly or used by a contractor under a contract with an institution of higher education which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.]~~

~~[(d) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent access to and use of a product for people with disabilities.]~~

§213.38. Procurements.

(a) The department, in establishing commodity procurement contracts for state agencies and institutions of higher education, and in compliance with the State of Texas Accessibility requirements (based on the federal standards established under §508 of the Rehabilitation Act), shall require vendors make accessibility information available for every product under contract through one of the following methods:

(1) the URL to a completed Voluntary Product Accessibility Template (VPAT) (http://www.access-star.org/ITI-VPAT-v1.2.html);

(2) the URL to the product accessibility information available from the General Services Administration "Buy Accessible Wizard" (http://www.buyaccessible.gov);

(3) an electronic document that addresses the same accessibility criteria in substantively the same format as the VPAT (http://www.access-star.org/ITI-VPAT-v1.2.html); or

(4) The URL to a Web page which explains how to request a completed VPAT for any product under contract.

(b) Each institution of higher education shall include in its accessibility policy standards and processes for making agency procurement decisions pursuant to §2054.453, Texas Government Code.

(1) Unless an exception is approved by the president or chancellor of an institution of higher education pursuant to §2054.460, Texas Government Code, and §213.37 of this chapter, or unless an exemption is approved by the department, pursuant to §2054.460, Texas Government Code, and §213.37 of this chapter, all electronic and information resources products developed, procured or changed through a procured services contract, and all electronic and information resource services provided through hosted or managed services contracts, shall comply with the provisions of Chapter 206 and Chapter 213 of this title, as applicable.

(2) Institutions higher education may develop a procurement accessibility policy for making procurement decisions. Such policy must be approved by the president or chancellor. In the absence of an approved procurement accessibility policy, institutions of higher education shall use either the Voluntary Product Accessibility Template (VPAT) or the Buy Accessible Wizard to assess the degree of accessibility of a given product when making procurement decisions according to the agency's accessibility policy.

(3) This subchapter applies to electronic and information resources developed, procured, or changed by an institution of higher education, or developed, procured, or changed by a contractor under a contract with an institution of higher education which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(4) This subchapter does not apply to information technology that is acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract.

(5) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

§213.39. Accessibility Training and Technical Assistance.

The department shall provide training and technical assistance regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to §2054.452, Texas Government Code.

(1) The department shall schedule on-going training events or seminars, focused on accessibility development, testing, procurement and/or awareness training.

(2) The president or chancellor of each institution of higher education should ensure appropriate staff receives training necessary to meet all accessibility-related rules.

(3) The department shall publish on its Web site, information regarding publicly available accessibility training opportunities and technical assistance.

§213.40. Accessibility Survey and Reporting Requirements.

(a) The department shall conduct an electronic and information resources survey regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to §2054.464, Texas Government Code.

(b) Each institution of higher education shall be required to complete the accessibility survey within the prescribed deadline established by the department.

§213.41. Accessibility Policy and Coordinator.

(a) Each institution of higher education shall develop and publish an accessibility policy, by June 30, 2009, which includes the standards and specifications of this chapter.

(b) Each institution of higher education's accessibility policy shall include a plan by which all non-compliant Web pages, Web sites and Web applications will be brought into compliance with the specifications and standards of this chapter.

(c) The department shall develop and publish a standard operating procedure to manage agency non-compliance identified through a survey, including a process for corrective action plan.

(d) Each institution of higher education shall appoint an accessibility coordinator to develop, support and maintain their internal accessibility policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802707
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-6124

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 36. EXOTIC LIVESTOCK AND FOWL

4 TAC §36.1

The Texas Animal Health Commission (Commission) proposes amendments to §36.1, concerning Definitions. The purpose of the amendments to §36.1 is to add a definition for livestock to include llamas, alpacas, and exotic livestock and so this proposal is to bring Exotic Livestock and Fowl Chapter into conformity with the changes in the Texas Agriculture Code.

House Bill (HB) 3300 from the 80th Texas Legislative Session amended the definition for livestock as utilized in the Texas Agriculture Code by adding llamas, alpacas, and exotic livestock and thus standardizes the classification of llamas and alpacas in all counties without having any impact on their agricultural valuation for tax purposes.

Llamas and alpacas are raised as domestic livestock. According to the bill analysis for this legislation failure to include them within the current definition of livestock in the Texas Agricultural Code has caused some llama and alpaca owners to have difficulty in obtaining farm/ranch liability insurance and not all Texas counties have an allowance (animal unit) determination for agricultural valuations for llamas and alpacas.

The Commission is adding the definition of livestock to Chapter 36 but it does not alter the classification for meeting Commission testing requirements.

FISCAL NOTE

Ms. Angela Lucas, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. In response to the requirements for an Economic Impact Statement and Regulatory Analysis this rule will not have an adverse impact on small or micro businesses.

PUBLIC BENEFIT NOTE

Ms. Lucas also has determined that for each year of the first five years the rule is in effect, the public benefit will be that the regulated community has clarity of understanding the change made through HB 3300 does not change the classification for meeting Commission testing requirements for llamas, alpacas, and exotic livestock, if required.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property in a manner to constitute a taking of real property. The purpose of the rule is to clarify the affect of legislation on animal disease control requirements. These adopted rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with Title 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in the Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendment may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendment is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on

the affected animals or on the affected place. That authority is found in §161.061.

§36.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) Livestock--Cattle, horses, mules, asses, sheep, goats, llamas, alpacas, exotic livestock, and hogs, unless otherwise defined.

(8) [~~(7)~~] Ratite--Exotic fowl with a flat breastbone and small or nonexistent wings, such as ostriches, emu, moa, and kiwi.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802695
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 719-0700

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.3, §51.8

The Texas Animal Health Commission (commission) proposes amendments to §51.3 concerning Exceptions and §51.8 concerning Cattle. The purpose of these amendments to Chapter 51 is to provide an individual animal identification requirement for certain animals entering Texas from out of state.

The Commission is amending entry requirements in §51.8, regarding dairy steers, to require that they be identified prior to movement into Texas. We get a large number of dairy steers sent to feedlots in Texas for feeding. The identification requirements are focused on reducing the risk of exposure to tuberculosis for entry into Texas. The commission has recently required that all dairy cattle in Texas be officially identified. These requirements were put in place in order to protect the Texas dairy cattle industry from the risk of exposure to Tuberculosis. This risk and concern is further demonstrated by the fact that several other states have recently identified tuberculosis in dairy herds. In order to protect our dairy industry from the risk of Tuberculosis and to ensure that all classes of dairy breed cattle are identified before entry into Texas, the Commission proposes a specific requirement that dairy breed steers being exported from other states into Texas be officially individually identified. The Commission is also differentiating between beef breed and dairy breed cattle that enter Texas under exceptions in §51.3 to ensure that dairy breed cattle are not authorized to enter under the exemptions.

Also the Commission is clarifying language in the rules in §51.3 and §51.8 to be consistent with terms utilized by USDA in its program standards and rules. USDA no longer recognizes designated pens or quarantined feedlots but has a national standard for approved feedyards. Therefore the Commission is proposing to make modifications to reflect that change. Additionally, USDA is currently utilizing different terms to describe areas within a state that have a different tuberculosis classification from the tuberculosis classification of the state as a whole. These areas within a state that have a different status are called a "zone" and no longer classified as an "area". The rules reflect this change.

FISCAL NOTE

Ms. Angela Lucas, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. In response to the requirements for an Economic Impact Statement and Regulatory Analysis this rule will not have an adverse impact on small businesses because it is enacted to protect Texas cattle from animals from out of state which are shipped to Texas. There will be no effect to small or micro businesses.

PUBLIC BENEFIT NOTE

Ms. Lucas also has determined that for each year of the first five years the rules are in effect, the public benefit will be having all dairy cattle in the state identified.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These adopted rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments @tahc.state.tx.us."

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the commission, by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the

commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. Section 161.101 provides that the commission may require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of specific diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl.

No other statutes, articles, or codes are affected by the amendments.

§51.3. Exceptions.

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter;

(2) Beef breed cattle [~~Cattle~~] 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, or to an approved feedyard [~~to a designated pen, or to a quarantined feedlot~~] when accompanied by a VS 1-27 Form on which each animal is individually identified. Brucellosis test data shall be written on the VS 1-27 Form which must include [~~includes~~] the test date and results;

(3) Beef breed cattle 18 months of age and over delivered directly to a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill;

(4) Beef breed steers, spayed heifers, beef breed cattle under 18 months of age, delivered to slaughter and accompanied by a waybill or to a livestock market by the owner or consigned there and accompanied by a waybill;

(5) Beef breed steers, spayed heifers and beef breed cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by a waybill;

(6) Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by a waybill;

(7) Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the Texas Animal Health Commission; [~~and~~]

(8) Beef breed steers, spayed heifers, and beef breed cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection; and[.]

(9) Feral Swine being shipped directly to slaughter. Feral swine shall be shipped in a sealed vehicle accompanied by a 1-27 permit with the seal number noted on the permit also providing the number of head on the permit.

(b) Exceptions for a certificate of veterinary inspection. Equine may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the Texas Animal Health Commission. Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route. Equine entering Texas for sale at a livestock market, may first be consigned directly to a veterinary hospital or clinic for issuance of the certificate of veterinary inspection, when accompanied by a prior entry permit issued by the Texas Animal Health Commission.

(c) Exceptions for an entry permit.

(1) Swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Title 9, Part 71.20;

(2) Swine that originate from an approved Swine Commuter Herd or that originate from a Pseudorabies Stage IV or V state or area and Brucellosis free state or area and are not vaccinated for pseudorabies;

(3) Poultry that originate from an approved Poultry Commuter Flock;

(4) Cattle that originate from an approved Cattle Commuter Herd;

(5) Equine accompanied by a valid equine interstate passport or equine ID card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months;[.]

(6) Sheep and goats consigned from out-of-state; and[.]

(7) Exotic fowl from out of state, except ratites.

§51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement and Change of Ownership). Cattle, which are parturient, postparturient, or 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers, being shipped to a feedyard prior to slaughter shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

(b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free state, or zone [~~area~~], as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone [~~area~~] with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with results of this test recorded on the certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are two (2) months of age or older may enter provided that they are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than two (2) months of age must obtain a entry permit from the Commission, as provided in §51.2(a) of this title (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two (2) months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with a entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones [~~areas~~] with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within twelve months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2) and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved [~~a quarantined feedlot or designated~~] pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the TAHC or APHIS/VS.

(B) When destined for feeding for slaughter in an approved feedyard [~~a quarantined feedlot or designated pen~~], cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard [~~quarantined feedlot or designated pen~~] only in sealed trucks; accompanied with a VS 1-27 permit issued by TAHC or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers and spayed heifers must be moved under permit to an approved pasture, approved feedlot, [~~quarantined feedlot, designated pen~~] or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clause (i) and (ii) of this subparagraph [~~below~~]:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;[~~, and~~]

(II) be moved by permit to a premise of destination and remain under Hold-Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted;[~~,~~] and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802696
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 719-0700

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CHAPTER 55. SWINE

The Texas Animal Health Commission (Commission) proposes the repeal and replacement of §55.9, concerning Feral Swine. The purpose of the repeal and replacement is to propose new requirements for handling and moving feral swine.

House Bill (HB) 2543 from the 80th Texas Legislative Session continues the Texas Animal Health Commission and it contains the Sunset Commission's recommendations regarding feral swine. HB 2543 clarifies the Commission's existing authority to regulate the movement of animals to include movement of feral swine for disease-control purposes. It provides the Com-

mission the authority to adopt rules relating to the movement of feral swine, including disease-testing requirements prior to movement from one location to another. The bill also grants the Commission specific statutory authority to require the registration of feral swine holding facilities for disease-control purposes. Also, the bill gives the Commission clear authority to take enforcement action against individuals who violate statutory provisions or Commission rules or orders related to feral swine. The bill does not authorize the Commission to interfere with any other agency's authority, such as Texas Parks and Wildlife Department's authority to regulate the hunting and trapping of feral swine.

In developing new rules for feral swine holding facilities, a stakeholder group comprised of the various organizations and people involved in the swine industry was convened to discuss issues for implementing the requirements from HB 2543. This group was to serve as a sounding board in the development of these feral swine rules. The group was composed of representatives of Texas Pork Producers, Texas Farm Bureau, Texas Wildlife Association, Texas Veterinary Medical Association, Texas Department of Agriculture, Texas Parks & Wildlife, Texas Tech University, USDA/APHIS, feral swine slaughter plants, a hunter, and holding facility operator. Also the group contained individual participants who represented various segments involved with feral swine. The group was chaired by TAHC Commissioner Chuck Real.

This feral swine stakeholder group met on September 21, 2007, and discussed the issues confronting these requirements. From that group, a set of issues was created for discussion points in the development of rules. The chairman of the group, TAHC Commissioner Chuck Real, then created a smaller working group, comprised of domestic and feral swine participants to discuss those issues and provide feedback to the rules drafted in response to those discussions. Then TAHC staff used the current requirements in §55.9 as a reference point and then discussed different standards as well as the various issue affecting feral swine trapping and slaughter. The smaller work group met on November 1 and discussed a number of issues in order to provide guidance to agency staff in the drafting of the rules. A draft set of rules was developed and circulated for discussion and suggestions for improvement. The resulting final draft of the rules will be considered by the Commission. The rules provide for the following requirements and standards in subsections (a) through (h):

Subsection (a) provides the definitions for terms used in this section.

Subsection (b) provides that the requirements apply to anyone who traps feral swine and moves them alive from the premises or location where they were trapped or otherwise captured. The subsection then indicates that movement is only authorized in accordance with the destinations provided in the rule.

Subsection (c) provides that a Holding Facility can not be approved until after an inspection by Commission personnel determines that the facility meets the specified criteria: Authorization for an approved facility shall be on a form prescribed by the Commission and include specified information. Records are to be generated and maintained by owners and/or operators of approved holding facilities. The Commission may suspend the authorization for an approved holding facility if the owner or operator fails to generate, maintain or provide records on feral swine received/released, fails to maintain swine-proof fences to prevent egress or ingress of feral swine, or violates any of the provisions of this chapter or the provisions of Chapter 161 of the Agriculture Code.

Subsection (d) provides that, if feral swine are trapped and moved for release to a hunting preserve, the hunting preserve, shall meet the stated requirements contained in the rules: Only male feral swine can be released to a hunting preserve. This is to allow facilities to harvest trophy boars (male) for release. The rules do not authorize gilts and sows (females) for release because of the higher risk for disease transmission as well as the problems of authorizing breeding gilts and sows that can create a greater nuisance problem. To qualify for release, the boars must be individually identified with a Commission approved form of identification. The Commission realizes that attaching identification to a feral swine, which is to be released for hunting, is not a popular requirement. As a practical matter, some type of identification is necessary to indicate what animals have been released and during movement what animals are being moved to a premises. Currently, the Commission is evaluating various types of identification to determine acceptable methods for this type of animal.

Also, records must be created and maintained by an authorized hunting preserve. Furthermore, there is a "Hunting Lease License" that is issued by the Texas Parks and Wildlife Department (TPWD). There was a lot of discussion on defining the hunting preserve with any terminology used by TPWD. TPWD has statutory authority, in Chapter 43 of the Parks and Wildlife Code to require the registration as a hunting lease if they have a guest for pay or other consideration to engage in hunting. This requirement includes lease arrangements for hunting feral swine. Based on that requirement, the rules are drafted to require that, in order to be recognized as a valid hunting preserve for release of feral swine, they must have a current permit and be in good standing with TPWD.

Also, the premises shall be enclosed by a swine-proof fence and the fence shall be maintained continually to prevent the egress of feral swine under, over, or through the fence. In Chapter 143 of the Texas Agriculture Code, it is indicated that a sufficient fence must keep swine from getting through the fence and that standard was what was used for the rule. Finally, feral swine shall not be fed any garbage.

The authorization for a hunting preserve may be suspended or rescinded if the owner and/or the operator fails to generate, maintain or provide records on feral swine as provided in subsection (c)(3) of this section, sufficient fences are not maintained, or violates any of the provisions of this chapter or the provisions of Chapter 161 of the Agriculture Code. Applications for an Approved Hunting Preserve shall be completed on a form prescribed by the Commission.

Subsection (e) provides that feral swine which are tested for change in status to domestic swine and/or are positive for brucellosis and/or pseudorabies shall be handled in accordance with the requirements for Brucellosis, as contained in Chapter 35, Subchapter B and for pseudorabies as contained in Chapter 55 of this Title.

Subsection (f) provides that formerly free-roaming swine could be qualified for reclassification as domestic swine upon completion of the stated test protocols.

Subsection (g) provides for inspection authority. Under these requirements, our legal authority is restated to clearly indicate that a person employed by the Commission may enter public or private property for the exercise of an authority or performance of

a duty under this chapter. Also, a Commission representative shall perform periodic inspections of authorized facilities and locations, and records related thereto, to ensure compliance with the requirements of the act or this chapter.

Subsection (h) provides for administrative, civil or criminal penalties for any violations of these rules. In addition, the agency may revoke or deny renewal of a permit and/or assess administrative penalties against any person for a violation of these rules. In Chapter 161, there are specific statutory provisions that make certain types of violations to be criminal with associated penalties. In §161.150, which is entitled "Failure to Register Feral Swine Holding Facilities; Holding of Feral Swine", provides that "(a) person commits an offense if the person recklessly: (1) maintains a feral swine holding facility that is not registered under §161.0412; or (2) as the owner or person in charge of a holding facility that is not registered under §161.0412, holds or permits another to hold a feral swine in the holding facility." Furthermore, it also provides that for "(e)ach feral swine held or permitted to be held in violation of subsection (a)(2) constitutes a separate offense." In that chapter, there is also another specific statutory section that creates a criminal penalty for violation of these requirements. In §161.1375, which is entitled "Movement of Feral Swine", it provides that "(a) person commits an offense if the person recklessly: (1) moves feral swine in a manner that is not in compliance with rules adopted by the commission under §161.0412 or §161.054; or (2) as the owner or person in charge of a holding facility in which a feral swine is held, permits another to remove feral swine from the holding facility in a manner that is not in compliance with those rules."

FISCAL NOTE

Ms. Angela Lucas, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. The agency will utilize existing fiscal resources to enforce this program.

An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated in correspondence with this requirement and has determined that there is not an adverse impact on this type of business based on the reason provided below. Based on the current number of registered facilities, there are 91. In making an economic assessment of this rule under those requirements, the Commission provides the following factors: (1) The program is specifically authorized by statute; (2) the purpose of the program is to reduce the disease risk for domestic swine; (3) the regulations provide authorized options that reduce the risk of spread as well as mitigate the further proliferation of feral swine; (4) the rules are being establishing to set minimum protective standards and these standards are not onerous or costly to achieve; and (5) by allowing the release of boar feral swine, we are allowing hunting preserves to release trophy boars which are an economic opportunity for the preserves. For these reasons, the Commission has determined that there is not an adverse impact on these facilities and, therefore, there is no need to do an EIS.

PUBLIC BENEFIT NOTE

Ms. Lucas also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be having a program where feral swine can trapped and removed providing a mechanism to deal with a disease threat and a difficult pest.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property in a manner to constitute a taking of real property. The purpose of the rule is to provide specific legal option for the trapping, handling and disposal of feral swine so as to minimize the disease threat to the domestic swine industry as well as allow options for the removal and transportation of a nuisance. These proposed rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

4 TAC §55.9

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Animal Health Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.061 provides that if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. In §161.041(f) it provides that "(i)n complying with this section, the commission may not infringe on or supersede the authority of any other agency of this state, including the authority of the Parks and Wildlife Department relating to wildlife. If a conflict of authority occurs, the Commission shall assume responsibility for disease control efforts, but work collaboratively with the other agency to enable each agency to effectively carry out its responsibilities.

Section 161.0412, entitled Regulation and Registration of Feral Swine Holding Facilities, provides that "(t)he Commission may, for disease control purposes, require the registration of feral swine holding facilities." Furthermore, that Section also provides that in order "(t)o prevent the spread of disease, the Commission may require a person to register with the commission if the person confines feral swine in a holding facility for slaughter, sale, exhibition, hunting, or any other purpose specified by commission rule." Rules adopted under this section shall include registration requirements, provisions for the issuance, revocation, and renewal of a registration, disease testing, inspections, recordkeeping, construction standards, location limitations, and provisions relating to the treatment of swine in and movement of swine to or from a feral swine holding facility.

Section 161.054, entitled Regulation of Movement of Animals, provides that "(a)s a control measure, the Commission by rule may regulate the movement of animals, including feral swine. The Commission may restrict the intrastate movement of animals, including feral swine, even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved." Also, that section provides that "(t)he commission by rule may prohibit or regulate the movement of animals, including feral swine, into a quarantined herd, premise, or area." In §161.054(e), the Commission may regulate the movement of feral swine, by rule, and require disease testing before movement of a feral swine from one location to another, as well as establish the conditions under which feral swine may be transported. Subsection (f) of that section also states that "(t)he commission's authority to regulate the movement of feral swine may not interfere with the authority of the Parks and Wildlife Department to regulate the hunting or trapping of feral swine."

Section 161.150, entitled "Failure to Register Feral Swine Holding Facilities; Holding of Feral Swine", provides that: "(a) person commits an offense if the person recklessly: (1) maintains a feral swine holding facility that is not registered under §161.0412; or (2) as the owner or person in charge of a holding facility that is not registered under Section 161.0412, holds or permits another to hold a feral swine in the holding facility." Furthermore, "(e)ach feral swine held or permitted to be held in violation of subsection (a) (2) constitutes a separate offense."

Section 161.1375, entitled "Movement of Feral Swine", provides that "(a) A person commits an offense if the person recklessly: (1) moves feral swine in a manner that is not in compliance with rules adopted by the commission under §161.0412 or §161.054; or (2) as the owner or person in charge of a holding facility in which a feral swine is held, permits another to remove feral swine from the holding facility in a manner that is not in compliance with those rules."

Chapter 165 of the Texas Agriculture Code entitled "Control of Diseases of Swine" has several sections which also provide statutory authority for these amendments. Section 165.021, entitled "Cooperation with United States Department of Agriculture", provides that the commission may cooperate with USDA in the eradication of swine diseases. Also, §165.022 provides that the Commission may adopt rules for the manner and method of eradicating swine diseases. Under §165.023, the commission is authorized to adopt rules governing the use of biologics. Also, the Texas Agriculture Code, Chapter 143, entitled Fences; Range Restrictions, provides in §143.001 for a sufficient fence around cleared land in cultivation that is at least five feet high and will prevent hogs from passing through.

No other statutes, articles, or codes are affected by the amendments.

§55.9. Feral Swine.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802697
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 719-0700

4 TAC §55.9

STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or de-

termine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.061 provides that if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. In §161.041(f) it provides that "(i)n complying with this section, the commission may not infringe on or supersede the authority of any other agency of this state, including the authority of the Parks and Wildlife Department relating to wildlife. If a conflict of authority occurs, the Commission shall assume responsibility for disease control efforts, but work collaboratively with the other agency to enable each agency to effectively carry out its responsibilities.

Section 161.0412, entitled Regulation and Registration of Feral Swine Holding Facilities, provides that "(t)he Commission may, for disease control purposes, require the registration of feral swine holding facilities." Furthermore, that section also provides that in order "(t)o prevent the spread of disease, the Commission may require a person to register with the commission if the person confines feral swine in a holding facility for slaughter, sale, exhibition, hunting, or any other purpose specified by commission rule." Rules adopted under this section shall include registration requirements, provisions for the issuance, revocation, and renewal of a registration, disease testing, inspections, recordkeeping, construction standards, location limitations, and provisions relating to the treatment of swine in and movement of swine to or from a feral swine holding facility.

Section 161.054, entitled Regulation of Movement of Animals, provides that "(a)s a control measure, the Commission by rule may regulate the movement of animals, including feral swine. The Commission may restrict the intrastate movement of animals, including feral swine, even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved." Also, that section provides that "(t)he commission by rule may prohibit or regulate the movement of animals, including feral swine, into a quarantined herd, premise, or area." In §161.054(e), the Commission may regulate the movement of feral swine, by rule, and require disease testing before movement of a feral swine from one location to another, as well as establish the conditions under which feral swine may be transported. Subsection (f) of that section also states that "(t)he commission's authority to regulate the movement of feral swine may not interfere with the authority of the Parks and Wildlife Department to regulate the hunting or trapping of feral swine."

Section 161.150, entitled "Failure to Register Feral Swine Holding Facilities; Holding of Feral Swine", provides that: "(a) person commits an offense if the person recklessly: (1) maintains a feral swine holding facility that is not registered under §161.0412; or (2) as the owner or person in charge of a holding facility that is not registered under Section 161.0412, holds or permits another to hold a feral swine in the holding facility." Furthermore, "(e)ach feral swine held or permitted to be held in violation of subsection (a) (2) constitutes a separate offense."

Section 161.1375, entitled "Movement of Feral Swine", provides that "(a) A person commits an offense if the person recklessly:(1) moves feral swine in a manner that is not in compliance with rules adopted by the commission under §161.0412 or §161.054; or(2) as the owner or person in charge of a holding facility in which a feral swine is held, permits another to remove feral swine from the holding facility in a manner that is not in compliance with those rules."

Chapter 165 of the Texas Agriculture Code entitled "Control of Diseases of Swine" has several sections which also provide statutory authority for these amendments. Section 165.021, entitled "Cooperation with United States Department of Agriculture", provides that the commission may cooperate with USDA in the eradication of swine diseases. Also, §165.022 provides that the Commission may adopt rules for the manner and method of eradicating swine diseases. Under §165.023, the commission is authorized to adopt rules governing the use of biologics. Also, the Texas Agriculture Code, Chapter 143, entitled Fences; Range Restrictions, provides in §143.001 for a sufficient fence around cleared land in cultivation that is at least five feet high and will prevent hogs from passing through.

No other statutes, articles, or codes are affected by the amendments.

§55.9. Feral Swine.

(a) Definitions

(1) "Approved holding facility"--A pen or pens approved by the Commission to temporarily hold feral swine pending movement to a recognized slaughter facility or an authorized hunting preserve.

(2) "Authorization"--is the written and signed documents required of this chapter to show compliance with the requirements of the chapter.

(3) "Authorized Hunting Preserve"-- means land where feral swine are authorized to be released for the purpose of hunting.

(4) "Domestic Swine"--Swine *(Sus scrofa)* other than feral swine.

(5) "Feral swine"--Swine that have lived all (wild) or any part (feral) of their lives free-roaming.

(6) "Free-Roaming"--means not confined by man to pens, houses or other facilities designed to hold swine and prevent their escape.

(7) "Recognized slaughter facility"--a slaughter facility operated under the state or federal meat inspection laws and regulations.

(8) "Swine-Proof Fence"-- means a fence constructed to sufficient construction standards; with materials of hog-proof net, woven or welded wire and wood, metal or other approved posts; be at least five feet in height from the ground to the top of the top wire; and, be maintained to prevent egress of feral swine over, through or under the fence.

(b) Required Authorization for Movement of Feral Swine: These requirements apply to anyone who traps feral swine and moves them from the premises or location where they were trapped or otherwise captured and moved alive. Movement is only authorized in accordance with the requirements provided below.

(1) The feral swine are moved directly from the premises where they were trapped to recognized slaughter facility;

(2) The feral swine are moved directly from the premises where they were trapped to an approved holding facility;

(3) The feral swine are moved directly from the premises where they were trapped to an authorized hunting preserve;

(4) The feral swine are moved from an approved holding facility to a recognized slaughter facility;

(5) The feral swine are moved from an approved holding facility to an authorized hunting preserve; or

(6) Feral swine that have been trapped and are being held for transportation to an authorized location may be held in an escape-proof cage on the vehicle or trailer that transported them from their original premise, or held within the transport trailer itself for up to seven (7) days.

(c) Approved Holding Facility:

(1) Written approval for a feral swine holding facility may be given after an initial inspection by Commission personnel determines that the facility meets the following criteria:

(A) The facility is double fenced with swine-proof fence to prevent any feral swine from escaping and continually maintained by the owner and/or operator to prevent escape of the feral swine. The two fences shall be at least four feet apart with no animals allowed in the space between the fences. Variance from this construction standard may be requested by the owner or the operator and may be approved by the agency Executive Director upon the recommendation of the Area Director, where facility is located, if a different construction standard supports that there is no risk of feral swine escaping;

(B) The facility shall not be located within two hundred yards of any domestic swine pens;

(C) Only feral swine may be placed in the facility;

(D) Records shall be maintained by the registrant as provided in paragraph (3) of this subsection and the facility must provide them when requested or inspected;

(E) Feral swine shall not be intentionally commingled with domestic or exotic swine;

(F) Feral swine shall not be fed any garbage or waste as it is defined in Chapter 165 of the Texas Agriculture Code;

(G) Dead animals shall be removed from the registered location premises promptly and disposed of in accordance with any applicable requirement or applicable ordinances or at the direction of Commission personnel,

(H) Feral swine shall only be moved from the facility directly to an approved slaughter facility or to an authorized hunting preserve.

(2) Application for Approved Holding Facility: Authorization for an approved holding facility shall be on a form prescribed by the Commission and include at least the following information:

(A) Name, address and telephone number of applicant;

(B) Facility name, physical location, county, directions to facility and telephone number;

(C) Diagram of the surrounding areas and the pens;

(D) Pictures of the pens;

(E) Signature of the owner/manager;

(F) The authorization is valid for two years from the date of issuance and shall expire on the two year anniversary date of the date of issuance unless re-authorized, and,

(G) Re-authorization of the approved holding facility shall be completed within 30 to 60 days prior to the expiration date.

(3) Record Keeping:

(A) Records to be generated and maintained by owners and/or operators of approved holding facilities and authorized hunting preserves shall include the following:

(i) The number of swine placed in and removed from the facility and/or preserve;

(ii) The approximate weight, size, color, sex and any applied identification for each feral swine;

(iii) Dates they were placed and/or removed from the facility;

(iv) The physical location where they were trapped,

(v) The physical location that they were moved to, including any unique identification number; and,

(B) The records shall be provided to an authorized agent of the Commission upon request. Records shall be kept and maintained for not less than five years from the date the record was generated.

(4) Suspension/Revocation: The agency may suspend the authorization for an approved holding facility if the owner or operator fails to generate, maintain or provide records on feral swine as provided in paragraph (3) of this subsection, fails to maintain swine-proof fences to prevent egress or ingress of feral swine, or violates any of the provisions of this chapter or the provisions of Chapter 161 of the Agriculture Code. The suspension will remain in effect until the deficiencies that were the cause of the suspension are corrected and any penalties assessed as result of the suspension are satisfied and a written suspension release is provided by the agency. The authorization for a holding facility may be revoked for blatant or repetitive violation(s) of the feral swine law or rules or for repeated failure to meet the requirements contained in this chapter.

(d) Authorized Hunting Preserve:

(1) If feral swine are to be trapped and moved for release to a hunting preserve, the hunting preserve shall meet the following requirements:

(A) Only male feral swine (i.e. boars and/or barrows) may be trapped, moved and released to a hunting preserve;

(B) Any swine released must be individually identified with a Commission approved form of identification prior to release;

(C) Records shall be generated and maintained as provided in subsection (c)(3) of this section;

(D) Shall have a "Hunting Lease License" with the Texas Parks and Wildlife Department and the license must be current and in good standing with that agency, as provided for in Chapter 43 of the Texas Parks and Wildlife Code;

(E) Shall be enclosed by a swine-proof fence and the fence shall be maintained continually to prevent the egress of feral swine under, over or through the fence;

(F) Feral swine shall not be fed any garbage as "garbage" is defined in Chapter 165 of the Texas Agriculture Code; and,

(G) The authorization for a hunting preserve may be suspended or rescinded if owner and/or the operator fails to generate, maintain or provide records on feral swine as provided in subsection (c)(3) of this section, sufficient fences are not maintained, or violates any of the provisions of this chapter or the provisions of Chapter 161 of the Agriculture Code. The suspension will remain in effect until the deficiencies that were the cause of the suspension were corrected and any penalties assessed as result of the suspension are satisfied. The preserve will be notified in writing when the suspension has been lifted. The authorization for a hunting preserve may be rescinded for blatant or repetitive violation(s) of the feral swine law or rules or for repeated failure to meet the requirements contained in this chapter.

(2) Application for Authorized Hunting Preserve:

(A) Applications shall be completed on a form prescribed by the Commission, providing at least the following information:

(i) Name, address and telephone number of applicant;

(ii) Physical location and county, directions to facility and telephone number;

(iii) A current copy of the Hunting Lease License issued by Texas Parks and Wildlife Department; and,

(iv) Signature of the owner/manager that states that facility fences meet the requirements for swine-proof fences as contained in subsection (a) of this section.

(B) The authorization is valid for two years from the date of issuance. The authorization shall expire on the two year anniversary date of the date of issuance unless re-authorized. Re-authorization of the hunting preserve shall be completed within 30 to 60 days prior to the expiration date.

(C) The facility is inspected periodically by agency personnel and continually meets the requirements of this chapter.

(e) Change in Classification of Feral Swine: Free-roaming swine may be qualified for reclassification as domestic swine upon completion of the following test protocol:

(1) Three consecutive tests for brucellosis and pseudorabies, with negative results, shall be conducted on all swine in the herd unit in order to qualify for reclassification. The first test must be at least 30 days after any reactors have been removed and slaughtered and the second test must be 60 to 90 days after the first test. A third test is required 60 to 90 days following the second negative results; and,

(2) In addition to the requirements in paragraph (1) of this subsection, any sexually intact female swine must also undergo a brucellosis and pseudorabies test, with negative results, a not less than 30 days after their initial farrowing.

(f) Testing: Feral swine which are positive for brucellosis and/or pseudorabies shall be handled in accordance with the requirements for brucellosis, as contained in Chapter 35, Subchapter B of this title (relating to Eradication of Brucellosis in Swine) and for pseudorabies as contained in Chapter 55 of this title (relating to Swine).

(g) Inspection Authority:

(1) A person employed by the Commission may enter public or private property for the exercise of an authority or performance of a duty under this chapter.

(2) A Commission representative shall perform periodic inspections of authorized facilities and locations, and records related thereto, to ensure compliance with the requirements of the act or this chapter.

(h) Violations and Penalties: In addition to any other violations that may arise under the act or this chapter:

(1) It is a violation for any person to falsify an application.

(2) Any violation of these rules is subject to the appropriate administrative, civil or criminal penalties. In addition, the agency may revoke or deny renewal of a permit and/or assess administrative penalties against any person for a violation of these rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802698
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 719-0700

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PART 5. STATE SEED AND PLANT BOARD

CHAPTER 81. CERTIFICATION PROCEDURES

4 TAC §81.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department), on behalf of the State Seed and Plant Board, proposes the repeal of Title 4, Part 5, §81.1, concerning Certification Procedures. The repeal is proposed to eliminate an unnecessary section. The section is outdated, subsection (a) is now in law and seed inspectors are no longer required to be approved for employment by the State Seed and Plant Board.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five years the repeal of §81.1 is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kostroun also has determined that for each year of the first five years the repeal of §81.1 is in effect the public benefit anticipated as a result of enforcing the sections will be having updated rules relating to the department's seed certification procedures. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the amended and repealed sections, as proposed.

Comments on the proposal may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal of §81.1 is proposed under the Texas Agriculture Code, §62.008, which provides that the department is the certifying agency in Texas for the certification of seed and plants; and the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules for administration of its duties under the code.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§81.1. Certification of Seed in Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802730
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
State Seed and Plant Board
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 28. HISTORIC SHIPWRECKS

13 TAC §§28.2 - 28.9

The Texas Historical Commission (hereafter referred to as the Commission) proposes amendments to §§28.2 - 28.4 and new §§28.5 - 28.9, concerning Historic Shipwrecks. The amendments and new sections are being proposed in an effort to update and modify the rules associated with historically significant shipwrecks that are either submerged under the waterways or contained on, in, or under the public lands of the State of Texas. The amendments and new sections should improve the quality of underwater archeological investigations by streamlining and clarifying the responsibilities of principal investigators.

F. Lawerence Oaks, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There will also be no effect on small businesses or micro-businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Mr. Oaks has also determined that for each year of the first five year period the rules are in effect the public benefit anticipated as a result of the amendments and new sections will be an increased efficiency and effectiveness in the implementation of the Antiquities Code of Texas.

Comments on the proposal may be submitted to F. Lawerence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments and new sections are proposed under Title 4, Chapter 442, §442.005(q) of the Texas Government Code and Title 9, Chapter 191, §191.052 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably affect the purposes of these chapters.

No other statutes, articles or codes are affected by the proposal.

§28.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Avoidance Margin--the area around a significant magnetic anomaly or sonar target in which the proposed activity cannot occur, i.e. the anomaly or target must be avoided by the margin, unless the source of the anomaly or target is investigated and shown, to the satisfaction of the commission, to be not historically significant or is mitigated in some fashion approved by the commission. The avoidance area will generally be defined by a circle or oval, the outer limits of which are separated from the approximate outer edges of the contoured magnetic anomaly by the appropriate avoidance margin.

(2) - (4) (No change.)

(5) Significant magnetic anomaly--best engineering judgment should be used to determine if the source of a magnetic anomaly might be historically significant. Determination of magnetic anomaly source significance must be made by a person experienced in the archeological interpretation of magnetometer data, taking into consideration the amplitude, duration, orientation, and complexity of each anomaly or anomaly cluster.

(6) (No change.)

(7) State Archeological Landmark--any cultural resource located in, on, or under the surface of any land, including submerged land, belonging to the State of Texas or to any county, city, or other political subdivision of the state, or a site officially designated as a landmark at an open public hearing before the commission. Any pre-twentieth century shipwreck is automatically a state archeological landmark. Any shipwreck, as defined in paragraph (4) of this section, that is not pre-twentieth century but meets the criteria under §26.9 of this title [~~is determined to be historically significant by the Commission~~] is also eligible to be officially designated as a state archeological landmark.

(8) (No change.)

§28.3. Procedures.

After consultation with affected persons and after due reflection on the commission's obligations under the Antiquities Code of Texas, the commission makes the following determinations of fact and policy:

(1) It is [~~the~~] in the public interest of the State of Texas to locate, protect, and preserve all shipwrecks in Texas' submerged lands.

(2) - (4) (No change.)

(5) The commission may require persons working in the area of a known shipwreck in Texas' submerged lands to take action approved by the commission to avoid damaging the shipwreck. The commission may require similar action of persons working in an area where there is a likelihood that a shipwreck exists in Texas' submerged lands or where a remote-sensing survey conducted under the provisions of §28.6 of this title has indicated the possible presence of a shipwreck.

(6) (No change.)

(7) Any non-shipwreck historic or prehistoric cultural resources in, on, or under the surface of any land, including submerged land, belonging to the State of Texas or to any county, city, or other political subdivision of the state is protected under Chapter 26 of this title.

§28.4. State Land Tracts Designated as High Probability [by the Commission as Shipwrecks in Texas' Submerged Lands].

(a) The commission has determined there is substantial evidence of the presence of shipwrecks in certain state land tracts of Texas' submerged lands. Such tracts are designated as high probability [sensitive] tracts by the commission. The list of high probability [sensitive] tracts is maintained by the Texas General Land Office as part of that agency's Resource Management Code system for state-owned submerged lands and is updated as necessary by the commission. This list is available from the Texas General Land Office, Resource Management Division.

(b) The commission shall take action to determine the site, or probable site, of shipwrecks in Texas' submerged lands within a designated state land tract and remove from the designations certain state land tracts in which there has been a determination there is not a substantial probability of finding a shipwreck.

(c) The list of high probability [sensitive] state tracts in state-owned submerged lands is considered only a guide to the probability of the presence or absence of a state archeological landmark or eligible property within a given tract.

(d) Texas' submerged lands not contained within defined state land tracts are generally considered high probability areas and the commission shall determine if a survey is needed within those waters for any given undertaking. [If, during the conduct of activities in submerged state land tracts, a person discovers the existence of a shipwreck, the person shall promptly notify the commission of the existence of the historic property and shall conduct the activities in a manner that will avoid damage to the shipwreck.]

[(e) The commission possesses information related to shipwrecks in Texas' submerged lands. Access to such information, with the exception of the list of sensitive tracts described in subsection (a) of this section, is limited to registered researchers as specified in Chapter 24 of this title. The commission's shipwreck reference file will be available for review by registered researchers at the commission during regular business hours.]

[(f) Any non-shipwreck historic or prehistoric cultural resources in, on, or under the surface of any land, including submerged land, belonging to the State of Texas or to any county, city, or other political subdivision of the state is protected under Chapter 26 of this title.]

§28.5. Access to Information.

The commission possesses information related to shipwrecks in Texas' submerged lands. Access to such information, with the exception of the list of high probability tracts described in §28.4(a) of this title, is limited to registered researchers as specified in Chapter 24 of this title. The commission's shipwreck reference file will be available for review by registered researchers at the commission during regular business hours.

§28.6. Conduct of Activities.

(a) All persons shall conduct their activities in Texas' submerged lands in a manner designed to avoid damage to shipwrecks in Texas' submerged lands, and to protect and preserve the cultural resources of Texas. If, during the conduct of activities in submerged state land tracts, a person discovers the existence of a shipwreck, the person shall promptly notify the commission of the existence of the historic property and shall conduct the activities in a manner that will avoid damage to the shipwreck.

(b) When a person submits an application for a permit from the U.S. Army Corps of Engineers, the person shall describe the proposed activity in sufficient detail to enable the commission to review the U.S. Army Corps of Engineers, public notice publication, and determine if the proposed activity may impact a shipwreck.

(c) If the proposed activity is in an area where a shipwreck is known to exist, or where there is a likelihood that a shipwreck exists, the commission may require an archeological survey, the purpose of which is to locate shipwrecks.

(d) Conduct of such a survey may be recommended by the commission to the U.S. Army Corps of Engineers, and may be required as a condition of issuance of the permit from the U.S. Army Corps of engineers. Such survey must be done under a Texas Antiquities Permit issued by the commission. The Texas Antiquities Permit is issued only to a qualified archeologist and allows the commission to monitor the quality and results of the survey.

(e) The commission has set the following minimum standards for conducting a survey.

(1) Horizontal positioning.

(A) Texas' submerged lands within bays and rivers and within the 3 nautical mile line in the Gulf of Mexico.

(i) The avoidance margin in this area is fifty (50) meters.

(ii) The maximum survey line spacing in this area is twenty (20) meters.

(B) Texas' submerged lands offshore beyond the 3 nautical mile line in the Gulf of Mexico.

(i) The avoidance margin in this area is one-hundred and fifty (150) meters.

(ii) The maximum survey line spacing in this area is thirty (30) meters.

(C) The geographical extent of an archeological survey must take include the construction impacts (e.g. anchor patterns of construction barges) at the margin of the primary activity and the size of the avoidance margin. Survey for a linear project (e.g. pipelines, dredged channels, and utility lines) must include the centerline of the project route and at least one offset line each side of the centerline. The survey area must be adequate to allow movement of the proposed activity such that it is outside of the avoidance margin of any significant magnetic anomaly or sonar target yet fully within the area surveyed.

(D) If avoidance of an anomaly or target determined to be significant by the archeologist holding the survey permit is not feasible, further investigation of the anomaly or target will be required as stated in subsections (g), (i) and (j) of this section. Such further investigation must also be conducted under a permit issued by the commission.

(2) Instrumentation and Survey Procedures. Instrumentation is classified as remote sensing equipment that detects the presence of an object by its inherent physical properties or by signals reflected from the object. The preferred suite of remote sensing equipment includes a marine magnetometer, a high-resolution side-scan sonar, and a recording fathometer.

(A) The magnetometer should be set to detect and record the magnetic environment at 1-second intervals or less and the data should be recorded on computer disc or other appropriate computer media.

(B) The side-scan sonar should use a transceiver designated as a 300 kHz transceiver minimum and should be operated in that frequency or a higher frequency if available and the data should be recorded on computer disc or other appropriate computer media.

(C) The fathometer must be capable of recording bathymetric data through digital output to a computer.

(D) The magnetometer, side-scan sonar, and fathometer, to the extent possible, should be interfaced, either directly or through computer files, with the global positioning system receiver to coordinate positions with the remote sensing equipment data.

(E) A differentially corrected global positioning system (GPS) receiver or system of equal or greater accuracy will be used for navigation and positioning.

(F) The positioning system must collect accurate position data at the same time interval as the magnetometer to preclude the necessity of interpolating positions between more widely spaced position fixes.

(3) Variance from the parameters specified in this section may be requested from the commission. Such variance must be based on quantifiable factors, e.g. the water is too shallow for effective use of side-scan sonar. Likewise, the commission may modify the parameters for a given survey area based on information held by the commission, e.g. survey line spacing may be decreased in the immediate vicinity of a known state archeological landmark beyond the 3 nautical mile line in the Gulf of Mexico.

(f) The commission has determined that a person who conducts a survey to determine the possible presence of hazards which would be dangerous to the safety of human life and equipment in the area where the proposed activity will be performed has also conducted a survey to determine the possible existence of shipwrecks in Texas' submerged lands, provided that the data from the survey is reviewed by a qualified archeologist under a permit issued by the commission and that such survey meets the minimum standards specified in this section.

(g) If a person detects a significant anomaly or sonar target as a result of conducting the survey described in this section, the person shall record a specific UTM, Latitude/Longitude, or state plane coordinate position, along with the geodetic datum in which the coordinates were recorded, and either:

(1) Conduct a thorough and good faith effort to search out the object causing the anomaly or sonar target and identify whether the object might possibly be a state archeological landmark or eligible property in Texas' submerged lands. Excavation in order to make an identification at this stage of investigation is prohibited without a permit issued by the commission. Or, the person may:

(2) Relocate the activity to an area outside of the appropriate avoidance margin in order to avoid disturbance of the object causing the anomaly or sonar target and thereby avoid damage to a shipwreck.

(h) If the person determines, through actions conducted under subsection (e) of this section, that the object causing the significant anomaly or sonar target is definitely not a shipwreck, and if the commission concurs with that determination, the person may perform the activity in a normal, routine manner.

(i) If the person determines, through actions conducted under subsection (e) of this section, that the object causing the significant anomaly or sonar target is a shipwreck or might be a shipwreck, the person shall either:

(1) Notify the commission of the existence of a shipwreck or possible shipwreck, report the coordinate position to the commission and relocate the activity to an area outside of the appropriate avoidance margin in order to avoid disturbance of the object causing the significant anomaly or sonar target and thereby avoid damage to a shipwreck; or

(2) Notify the commission of the existence of a shipwreck or possible shipwreck and report the coordinate position to the commission; whereupon the commission can perform its activities described in Subchapter C, Powers and Duties, and Subchapter E, Prohibitions, of the Antiquities Code of Texas. The commission may require additional archeological investigations of the shipwreck or possible shipwreck, or, if the commission concurs that no damage will occur to the shipwreck from the proposed activity, the commission may authorize the person to proceed with the proposed activity in a normal, routine manner.

(j) Investigation by archeological divers to identify the source of an anomaly or sonar target is appropriate under a survey permit. Such investigations may involve removal of overburden to expose small section of a buried object but shall not involve extensive excavation or artifact recovery. Survey level diving investigations must be approved as part of the survey permit issued to the archeologist or as a separate survey permit.

§28.7. Remote Sensing Survey for Pure Research Purposes.

A person may conduct a survey for the sole purpose of pure historical or archeological research on shipwrecks and not for review and compliance clearance. Such pure research surveys must be conducted under a Texas Antiquities Permit issued to a qualified archeologist by the commission. The minimum standards for conducting such a survey may vary from those set forth in §28.6(e) of this title.

§28.8. Activities Conducted on Shipwrecks beyond the Survey Level.

Any activity conducted on a shipwreck beyond that authorized under the survey permit issued by the commission must be authorized under a separate permit issued by the commission specifically for that activity as discussed under §26.20 of this title.

§28.9. Analysis and Presentation of Data.

Analysis and presentation of magnetometer and side-scan sonar data upon completion of a survey to locate submerged cultural resources, in addition to requirements under §26.24 of this title.

(1) If the survey is of sufficient duration, the magnetometer data will be corrected for diurnal variation using either separate data collected concurrently specifically for the purpose of diurnal corrections or through the use of an appropriate algorithm or mathematical formula.

(2) Magnetometer data will be presented on maps in a contour format. Magnetic anomalies recommended for avoidance or investigation shall be illustrated at a scale and showing isolines at appropriate levels to illustrate the complexity and intensity of individual anomalies. Illustrating anomalies at this scale may require separate illustrations from the overall survey map.

(3) Maps illustrating magnetic anomalies will show the actual survey lines followed by the survey vessel and thus the position of each anomaly in relation to the survey lines.

(4) Positive and negative nodes of magnetic anomalies shall be indicated either by different colors of isolines (e.g. red for positive node, blue for negative node) or by variation in line type (e.g. hatched or dashed) for the negative isolines.

(5) A map of the survey area must be included in the survey report showing both the proposed survey lines and the actual survey lines.

(6) A table of anomalies and sonar targets recommended for avoidance or investigation, including the positions of those anomalies or targets, shall be included in the report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 20, 2008.

TRD-200802632
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-1858

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13 TAC §§28.5 - 28.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Historical Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Historical Commission proposes the repeal of §§28.5 - 28.7, concerning Historic Shipwrecks.

F. Lawerence Oaks, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal. There will also be no effect on small businesses or micro-businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Mr. Oaks has also determined that for each year of the first five year period the repeal is in effect the public benefit anticipated as a result of the repeal will be an increased efficiency and effectiveness in the implementation of the Antiquities Code of Texas.

Comments on the proposal may be submitted to F. Lawerence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeal is proposed under Title 4, Chapter 442, §442.005(q) of the Texas Government Code and Title 9, Chapter 191, §191.052 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably affect the purposes of these chapters.

No other statutes, articles or codes are affected by the proposal.

§28.5. Conduct of Activities.

§28.6. Remote Sensing Survey for Pure Research Purposes.

§28.7. Activities Conducted on Shipwrecks beyond the Survey Level.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-1858

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PART 8. TEXAS FILM COMMISSION

CHAPTER 122. TEMPORARY USE OF STATE BUILDINGS AND GROUNDS BY TELEVISION OR FILM PRODUCTION COMPANIES

13 TAC §§122.2, 122.4, 122.7

The Office of the Governor, Texas Film Commission (Commission) proposes an amendment to §122.2, the definitions for Chapter 122; an amendment to §122.4, concerning a projects ineligibility to use a state property for production activity; and an amendment to §122.7, concerning an Applicant's responsibilities. The proposed amendments add language to §122.2(11) and §122.7(d) to clarify the responsibilities of a production company wishing to use a state property. The proposed amendment to §122.4(a)(2) clarifies how an Applicant would be ineligible to use a state property.

Bob Hudgins, Director of the Texas Film Commission, has determined that there will be no fiscal implications to the state or to local governments as a result of these proposed amendments. No cost to either government or the public will result from the proposed amendments. There will be no impact on small businesses or microbusinesses.

Mr. Bob Hudgins has also determined that the public benefit anticipated as a result of the proposed amendments is a clearer understanding of who can use a state property for production activity, and their responsibilities when using a state property. No economic costs are anticipated for persons who are required to comply with the proposed amendments.

Written comments on the proposed amendments may be hand delivered to Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701, mailed to P.O. Box 12428, Austin, Texas 78711-2428, or faxed to (512) 463-1932 and should be addressed to the attention of Michael Bryant, Assistant General Counsel. Comments must be received within 30 days of publication of the proposed amendments.

The amendments are proposed pursuant to the Texas Government Code §2165.008 which directs the Commission to develop a procedure for the temporary use of state building or grounds by a production company, and Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

No other codes, statutes, or articles are affected by this proposal.

§122.2. Definitions.

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Actual costs--The costs incurred during production activity that have not already been paid for by the production company prior to the activity.

(2) Applicant--The entity coordinating locations for the Production Company, who acts as the representative of the Production Company for the locations.

(3) Certificate of liability insurance--The paper record showing that the Production Company has purchased insurance, the amount insured for, and who is insured under the policy.

(4) Commercials--Either an individual commercial, series of commercials, music video, infomercial, interstitial, or still shoot, that is made for the purpose of promoting a product, service, or idea.

(5) Desired location--The building or grounds that a production company is applying to use.

(6) Episodic television--A project, either narrative or documentary, consisting of a series of installments usually following the same story arc that is intended for distribution via broadcast or digital distribution via cable, satellite, the internet, or mobile electronic device.

(7) Film--Either a narrative or documentary project intended for distribution in theaters or by DVD, internet, or mobile electronic device.

(8) Filming days--The phase of the project during which the content is recorded.

(9) Fiscal year--The period between September 1st and August 31st of the next calendar year.

(10) In-state spending--The amount of money spent by a production company in Texas during all stages of the project.

(11) Licensing Fee--An amount charged to the Applicant for the use of the state property's likeness and image.

(12) [~~(11)~~] Location--A building or ground where production activity will take place.

(13) [~~(12)~~] Location fee--An amount charged to the Applicant for each day production activity occurs on the property.

(14) [~~(13)~~] Production activity--Any activity the production company engages in while on location, including, but not limited to, preparation, filming, parking, catering, and take down.

(15) [~~(14)~~] Production company--The entity producing and creating the project, who is ultimately responsible for all production activity.

(16) [~~(15)~~] Production insurance--A financial transaction between a production company and an external company securing all responsibility of damages and accidents while on location to the production company.

(17) [~~(16)~~] Request for Use Application--The application that will be completed by the Applicant to ask for the use of a state property for production activity.

(18) [~~(17)~~] Security deposit--A monetary amount given to the state property before commencement of production activity at that location which gives the state agency some protection for damage done to the location by the Production Company.

(19) [~~(18)~~] State property--All locations owned and operated by the State of Texas for public or private use.

(20) [~~(19)~~] Support location--An area of the property that is being used for production activity other than filming that can either be part of the filming location or a stand-alone location.

(21) [~~(20)~~] Television project--Either a narrative or documentary project, including, but not limited to episodic series, miniseries, television movie (MOW), television pilot, or television episode, that is intended for distribution via broadcast or digital distribution via cable, satellite, the internet, or mobile electronic device.

§122.4. Ineligibility.

(a) A production company will not be eligible to conduct production activity on a state property if they fall under one of the following conditions.

(1) The production company does not have production insurance in the amount required by the desired location that names the State of Texas as an additionally insured; and/or

(2) The content of the project is obscene[~~pornographic~~] in nature, as defined by Texas Penal Code §43.21.

(b) A production company is ineligible to receive a waiver of location fees if they fall under one of the following conditions.

(1) The production company does not have production insurance in the amount required by the desired location that names the State of Texas as an additionally insured; and/or

(2) The production company does not meet the minimum in-state spending requirements.

§122.7. Applicant's Responsibilities.

(a) The Applicant is responsible for paying location fees.

(1) The Texas Film Commission, in conjunction with the Applicant's desired location and the state agency governing that property, will determine the fee to be charged for each day that production activity will occur on the property based on the length of use, loss of business, and impact on the property. The location fee will be stated in the contract between the Applicant and the state property, and is non-negotiable after that point.

(2) The Applicant shall deposit the location fees to the credit of the State of Texas, Comptroller of Public Accounts, and is expected to do so on or before the first day of production activity. Failure to follow these rules may result in the immediate disqualification of the Applicant or similar consequences.

(b) An Applicant may be required to pay a security deposit to the state agency governing the desired location in the amount determined by the Texas Film Commission and the agency. Failure to follow these rules may result in the immediate disqualification of the Applicant or similar consequences.

(c) The Applicant is responsible for paying any actual costs.

(1) An Applicant is required to reimburse the state property for actual costs incurred during the use of the location. These costs include, but are not limited to, repairs to the property from damage, trash removal, and excessive electricity and water use.

(2) The state agency shall notify the Applicant in writing of any actual costs that the Applicant is responsible for reimbursing. The Applicant must reimburse the cost no later than the 21st day after the date on which the written notification is received.

(d) The Applicant may be required to pay a licensing fee to the state agency governing the desired location in the amount determined by the Texas Film Commission and the agency. Failure to follow these rules may result in the immediate disqualification of the Applicant or similar consequences.

(e) [~~(d)~~] The Applicant, Production Company and its employees are required to maintain a code of conduct any time they are on location that includes, but is not limited to, the following:

(1) no smoking;

(2) no alcohol;

(3) no illegal drugs;

(4) no soliciting;

(5) following location-specific dress code; and

(6) any other code of conduct required by the specific location.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802727
Michael Bryant
Assistant General Counsel
Texas Film Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 463-9200

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §§34.1 - 34.4

The Texas Alcoholic Beverage Commission (commission) proposes new Chapter 34, to be titled Schedule of Sanctions and Penalties. Within this new proposed chapter, the commission proposes new §34.1, relating to General Provisions; new §34.2, relating to Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations; new §34.3, relating to Schedule of Sanctions and Penalties for Major Regulatory Violations; and new §34.4, relating to Schedule of Sanctions for Penalties for Marketing Practices Violations.

The Texas Alcoholic Beverage Commission adopted §37.60 relating to a Standard Penalty Chart in 1995. This rule was amended in 2002, and with the adoption of new Chapter 34 and the proposed new rules, §37.60 will be repealed as no longer necessary.

Senate Bill 904, §10, 80th Legislature, Regular Session, 2007, amended Chapter 5 of the Texas Alcoholic Beverage Code (Code) to add new §5.362 to the Code. This new section requires the commission to adopt a schedule of sanctions that may be imposed on a license or permit holder for violations of this Code or rules adopted under the Code. The schedule must:

- Impose a penalty or sanction that is appropriate for the violation that is the basis for disciplinary action;

- Include the number of days a permit or license may be suspended and the corresponding civil penalty under §11.64 for each violation;

- Consider the permit or license held by the person who violates the code;

- Consider the type of violation;

- Consider the violation history of the permit or license holder; and

- Allow for deviations for clearly established mitigating or aggravating circumstances.

The new chapter and sections are proposed to comply with the requirements of this new section of the Code.

Proposed new §34.1 sets out general provisions of the rule relating to legal authority, applicability, and implements the requirements set forth in new §5.362.

Proposed new §34.2 is a table showing the schedule of sanctions and penalties for violations relating to health, safety and welfare violations of the Code. It contains a description of the violation and the number of days and dollar amount to be assessed under the chart for the first, second and third violation of the Code.

Proposed new §34.3 is a table showing the schedule of sanctions and penalties for violations relating to major regulatory violations of the Code. It contains a description of the violation and the number of days and dollar amount to be assessed under the chart for the first, second and third violation of the Code.

Proposed new §34.4 is a table showing the schedule of sanctions and penalties for violations relating to marketing practices violations of the Code. It contains a description of the violation and the number of days and dollar amount to be assessed under the chart for the first, second and third violation of the Code.

Charlie Kerr, Director of Business Services, has determined that for the first five years that the proposed new rule is in effect, there will be no fiscal impact on units of state or local government as a result of enforcing and administering the section as proposed.

Mr. Kerr has also determined that for the first five years that the proposed new rule is in effect, there is no cost of compliance with the rule because the rule affects only persons or businesses that violate a provision of the Code or commission rules. However, there will be a fiscal impact on small and micro-businesses and individuals that are subject to the sections because they violate a provision of the Code or commission rules. In determining the amount of civil penalty to be assessed, the Alcoholic Beverage Code §11.641(b), prohibits the commission from considering the volume of alcoholic beverages sold, the receipts of the business, taxes paid, or the financial condition of the permittee or licensee. As a result of this section, the commission does not have the ability to track or separate out from the entire field of permit and license holders those businesses that are small or micro-businesses.

In fiscal year 2007, under the penalty and sanctions chart found at §37.60, Standard Penalty Chart, which the proposed rule will replace, the commission collected $2,610,400 in fines for violations of the Code or commission rules. This amount excludes civil penalties for administrative cases in the legal division, which are not subject to the standard penalty chart. Although §11.64(a) of the Code provides a range of civil penalties that may be imposed from a minimum of $150 to a maximum of $25,000 per day, the dollar amount for each day assessed under §37.60 is $150.00. This has been the amount assessed per day since 1977 and since the original penalty chart was adopted in 1995. It was felt that this minimum dollar amount should be adjusted to reflect cost of living adjustments. One hundred and fifty dollars in 1977 is equivalent to almost $500 in 2008 dollars (354% increase). One hundred and fifty dollars in 1995 is equivalent to almost $208 in 2008 dollars (38.7% increase).

Another factor in determining how much the dollar amount should be increased is whether the current amount is sufficient to deter violations of the Code or commission rules, and/or approximate the loss of revenue for alcoholic beverage sales to a business for having a permit or license suspended for a day. In assessing whether the amount approximates daily business revenues for sales of alcoholic beverages, it is instructive to observe that a permit holder is three times more likely to pay the civil penalty than serve a suspension, and this includes those violations for which the opportunity to pay a civil penalty as an

alternative to suspension is not authorized under §11.64 of the Code.

The proposed new sections have generally increased the range of civil penalties from $150 to $2250 per day. However, the number of days assessed for a first violation has generally been reduced. The day and dollar amounts were increased to a level that the Commission believes will be more effective in deterring violations of the Code or commission rules. The specific dollar amounts proposed take into consideration numerous factors, including the impact a violation has on the public safety, health, and welfare, the ability of a permit or license holder to prevent or control a violation and the ability of the commission to effectively regulate in the face of violations of that type.

For example, the most frequently violated provisions of the Code are offenses relating to minors. Sale to minor alone accounted for 1,609 of the 2,972 administrative cases docketed in 2007. The amount of the penalty for this violation is proposed to increase from $150 to $500 for a first violation. However, the range of days for the first violation has been decreased from 7-20 days to 5-7 days. The current range of penalty for this violation would be from $1050 to $3000 for a first violation. Under the proposed rule, the range of penalty would be from $2500 to $3500. Although this appears to be a more than two fold increase at the lower end, this proposed increase would bring the proposed penalty in line with the amounts assessed for the same violation in 1983, and is less than the same penalty assessed in 1977 for the same violation.

At the same time the commission proposes to increase the cost of violating the Code or commission rules, the commission has undertaken aggressive programs to increase awareness of and compliance with the Code. Because the day and dollar amounts are substantially higher, the commission anticipates that overall violations of the Code will decrease. The combination of increased efforts of the commission to encourage voluntary compliance with the Code, and increased penalties when a violation does occur is expected to achieve or at least further the goal of deterrence.

There is no impact of the proposed new sections on permit and license holders who do not violate the Code or commission rules. The impact of the proposed new sections on permit and license holders who do violate the Code or commission rules could be substantial, depending on the section of the Code violated, the number of prior violations and aggravating and ameliorating circumstances to be considered by the commission under §11.641(a) of the Code.

If the proposed sections have no impact on deterring violations the commission projects an increase of 38% in fines and civil penalties that will be paid as a result of adopting the proposed new sections. Based on fiscal year 2007 fines and civil penalties, this would result in a total estimated impact of $3,602,352. In fiscal year 2007 the commission issued 106,646 licenses and permits. Of this very large number however, only approximately 1,380 violated a section of the Code or commission rule that resulted in a civil penalty under these sections. If all factors remain at or near the same, the average cost for those who violate the Code or a commission rule will be $2,610. For the approximately 105,266 permit or license holders who do not violate the Code or a commission rule, the impact will be $0.

Lou Bright, General Counsel, has determined that for each of the first five years that the new sections are in effect, the public will benefit from the adoption of the rule because the sections are expected to operate as an effective deterrent to violations of the Code and commission rules.

Comments on the proposed new chapter and sections may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the repeals and proposed new rule in the *Texas Register*.

The proposed new chapter and sections are authorized by §5.31 and §5.362 of the Alcoholic Beverage Code (Code). Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 5.362 provides the specific authority to adopt these rules to establish a schedule of sanctions to be imposed on a license or permit holder for violations of the Code or rule of the Commission.

Cross Reference: §§5.31, 5.362, 11.64 and 11.641 of the Alcoholic Beverage Code will be affected by these actions.

§34.1. General Provisions.

(a) This rule relates to §§11.61, 11.64, 11.641 and 106.13 of the Alcoholic Beverage Code.

(b) Agents, compliance officers or other specifically designated commission personnel have authority to settle a complaint issued by the commission against a person for a violation of the Texas Alcoholic Beverage Code (Code), prior to filing a contested case under Government Code, Chapter 2001, Subchapter C (Administrative Procedure Act).

(c) A settlement authorized by this chapter must reflect the number of days a permit will be suspended or the amount of civil penalty authorized per day in lieu of suspension and shall conform to the other provisions of this chapter.

(d) A written warning may be issued for any violation if it is determined by designated commission personnel, to be an effective deterrent from further violations of the Code.

(1) A written warning may be used as an aggravating circumstance for purposes of determining the appropriate sanction under §34.2.

(2) A written warning is subject to the rights and procedures of a contested case under the Administrative Procedure Act.

(3) A written warning is an administrative notice issued by a representative of the commission to the permit or license holder documenting that a violation of the TABC code or rules has occurred.

(e) Any case alleging a sale to a minor or intoxicated person in violation of Alcoholic Beverage Code §§11.61(b)(14), 61.71(a)(6) or 101.63 in which the unlawful sale or service directly or indirectly caused death or serious bodily injury shall be referred directly to the Legal Services Division by district or regional personnel without an offer of settlement or compromise provided to the permittee/licensee. For purposes of this section, "serious bodily injury" means as defined in §1.07(a)(46) of the Texas Penal Code.

(f) Each suspension of a permit or license shall run for consecutive days. A person assessed a suspension by the commission may be provided with an opportunity to pay a civil penalty in lieu of a suspension as provided by §11.64 of the Code. The commission may, in its discretion, allow a licensee/permittee to divide an imposed sanction between civil penalty and suspension.

(g) A subsequent violation of the Code or rule will result in a sanction in the next higher violation level if the subsequent violation:

(1) is for a health, safety and welfare violation and occurs within 36 months of the prior violation, or

(2) is for a violation listed in the major regulatory violation category within 24 months of the prior violation, and

(3) the person has been given written notice of the prior violation, or

(4) the subsequent violation is issued during an undercover operation.

(h) The list of violations in §34.2 is not intended to be an exhaustive list of possible violations of the Code or rules of the commission. A sanction for a violation of the Code or rules that is not listed in §34.2 must be approved by either the assistant administrator for field operations or a division director prior to entering into a settlement.

(i) A person authorized to enter into a settlement under this section is also authorized to recommend a deviation from sanctions in §34.2 when aggravating or mitigating circumstances are found to exist.

(1) A recommendation to deviate from sanctions in §34.2 must be made in writing.

(2) The administrator or his designee must approve a recommendation to deviate from §34.2 before the settlement may be offered.

(j) This section does not apply to a contested case brought under Chapters C and D of the Administrative Procedure Act, or a complaint or violation referred to the legal division of the commission for resolution.

§34.2. Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations.
An act or failure to act which results in a violation of the code or rules that represents a threat to the public health, safety, or welfare will be assessed sanctions and penalties as follows:
Figure: 16 TAC §34.2

§34.3. Schedule of Sanctions and Penalties for Major Regulatory Violations.
An act or failure to act which results in a violation of a major regulatory provision of the code or rules will be assessed sanctions and penalties as follows:
Figure: 16 TAC §34.3

§34.4. Schedule of Sanctions and Penalties for Marketing Practices Violations.
An act or failure to act which results in a violation of a provision of the code or rules relating to marketing practices will be assessed sanctions and penalties as follows:
Figure: 16 TAC §34.4

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

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Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 206-3204

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES
SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.22, 21.24, 21.25

The Texas Higher Education Coordinating Board proposes amendments to §§21.22, 21.24, and 21.25 concerning Determination of Resident Status and Waiver Programs for Certain Nonresident Persons. Specifically, the amendment to §21.22(6) would adhere to standard procedure by defining the acronym "USCIS" the first time it occurs in the rules. The amendment to §21.22(11) would correct the spelling of an institution by changing it from "San Houston State University" to "Sam Houston State University." Section 21.24(b)(3) states that an eligible nonimmigrant that holds one of the types of visas listed in Chart I and incorporated into this subchapter for all purposes may establish a domicile. The visa type "NAFTA" is proposed for inclusion in the chart to match the existing "Immigration Classifications and Visa Categories" on the website of the United States Citizenship and Immigration Services (USCIS). The eligibility status of visa type "TD" had heretofore not been listed. The amendment would make it clear that a nonimmigrant with this visa type is not eligible to domicile in the United States. Section 21.25(c) states that if a person who establishes resident status under §21.24(a)(1) of this title is not a Citizen of the United States or a Permanent Resident, the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit, stating that the person will apply to become a Permanent Resident as soon as the person becomes eligible to apply. The affidavit shall be required only when the person applies for resident status and shall be in the form provided in Chart II and incorporated into this subchapter for all purposes. The proposed amendment would add a line to the affidavit (Chart II) on which a person would indicate his or her date of birth. This addition to the affidavit has been requested by institutions in order to ensure the proper matching of documents in the event several students have the same name.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be an easier understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The amendments affect Texas Education Code, §§54.0501 - 54.075.

§21.22. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (5) (No change.)

(6) Eligible for Permanent Resident Status--a person who has filed an I-485 application for permanent residency and has been issued a fee/filing receipt or notice of action by the United States Citizenship and Immigration Services (USCIS) [~~USCIS~~] showing that his or her I-485 has been reviewed and has not been rejected.

(7) - (10) (No change.)

(11) General Academic Teaching Institution--The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy (now Texas A&M University--Galveston); Texas Tech University; University of North Texas; Lamar University; Lamar State College--Orange; Lamar State College--Port Arthur; Texas A&M University--Kingsville; Texas A&M University--Corpus Christi; Texas Woman's University; Texas Southern University; Midwestern State University; University of Houston; University of Texas--Pan American; The University of Texas at Brownsville; Texas A&M University--Commerce; Sam [~~San~~] Houston State University; Texas State University--San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; and The University of Texas at Tyler, and as defined in Texas Education Code, §61.003(3).

(12) - (27) (No change.)

§21.24. Determination of Resident Status.

(a) (No change.)

(b) The following non-U.S. citizens may establish a domicile in this state for the purposes of subsection (a)(2) or (3) of this section:

(1) - (2) (No change.)

(3) an eligible nonimmigrant that holds one of the types of visas listed in Chart I and incorporated into this subchapter for all purposes;
Figure: 19 TAC §21.24(b)(3)

(4) - (7) (No change.)

(c) - (f) (No change.)

§21.25. Information Required to Initially Establish Resident Status.

(a) - (b) (No change.)

(c) If a person who establishes resident status under §21.24(a)(1) of this title is not a Citizen of the United States or a Permanent Resident, the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit, stating that the person will apply to become a Permanent Resident as soon as the person becomes eligible to apply. The affidavit shall be required only when the person applies for resident status and shall be in the form provided in Chart II and incorporated into this subchapter for all purposes.
Figure: 19 TAC §21.25(c)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802673
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 24, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §§21.2100 - 21.2106, 21.2108

The Texas Higher Education Coordinating Board proposes amendments to §§21.2100 - 21.2106 and 21.2108 concerning the Exemption Program for Veterans and their Dependents (The Hazlewood Act). Specifically, the amendment to §21.2100(8) expands the definition of "dependent" to include a child who was claimed as a dependent in the same year as the veteran's death or service-related injury. Previously, a child was a dependent if the child was claimed in the year preceding the veteran's death or injury. The amendment makes §21.2100(8) consistent with §21.2105(b)(3). The amendment to §21.2100(15) reflects the fact that a change regarding deposit fees as mandated in Senate Bill 1233, 80th Texas Legislature, deleted the term "property." This amendment regarding deposit fees is also proposed in §§21.2101(a), 21.2101(b), 21.2102(4), 21.2103(2), 21.2106(a)(3), and 21.2108(a). The amendment to §21.2100(16) updates the citation and title for Chapter 21, Subchapter B, which deals with residency. The amendment to §21.2101(a), in addition to deleting the word "property" from "deposit fees," corrects grammar by changing "veterans" to "veteran." The amendment to §21.2101(g) deletes the now out-dated academic term relevant to when junior college districts were given authority to establish fees for extraordinary costs for certain programs. Amendments to §21.2102(4), in addition to deleting the word "property" from "deposit fees," clarify that Hazlewood benefits can be combined with federal education benefits based on their combined calculated value for the entire semester. A grammatical error is also corrected, changing "are" to "is." The amendment to §21.2104(b) provides guidance for processing late applications. The amendment to §21.2104(c) deletes the now out-dated academic term relevant to when all applicants were first required to submit an application to receive the exemption. Previously, only applicants new to the program were required to submit documentation. The amendment to §21.2105(a)(2) deletes the term "reservist's," as all veterans of the armed services may be eligible for federal veterans' education benefits. The amendment to §21.2105(b)(3) reflects the complete list of veteran service-related conditions by which a dependent may qualify for an exemption. The amendment to §21.2106(a)(4) updates the rules related to the eligibility of a

veteran who has defaulted on a state and/or federal education loan to comply with statutory language. New §21.2108(a)(c) provides guidance for reporting students who have received federal and state veterans' education benefits during the same semester.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering these changes in the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be an easier understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt rules to provide for the efficient and uniform application of this section.

The amendments affect Texas Education Code, §54.203.

§21.2100. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (7) (No change.)

(8) Dependent--An individual who was claimed as a dependent for federal income tax purposes by the individual's parent or court-appointed legal guardian in a particular year and in the previous tax year. A veteran was a dependent if he or she was claimed as such by a parent or legal guardian during the veteran's year of entry into the service and in the previous tax year. A child was a dependent if he or she was claimed as a dependent for tax purposes the year [~~preceding the year~~] of the veteran's death or disabling injury.

(9) - (14) (No change.)

(15) Deposit [~~Property deposit~~] fees--Fees that an institution may collect[~~,~~] under Texas Education Code, §54.502[~~, elect to charge to insure that institution against losses, damages, and breakage in libraries and laboratories~~].

(16) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B [~~§§21.727 - 21.736~~], of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons).

(17) - (19) (No change.)

§21.2101. Hazlewood Act Exemption.

(a) Subject to the following provisions, an institution shall exempt an eligible veteran [~~veterans~~] or child from the payment of tuition and fees, other than [~~property~~] deposit and student service fees. The exemption shall not apply to the payment of fees for services or items that are not required for enrollment in general or for the specific courses taken by the student.

(b) If the eligible veteran or child is entitled to federal veterans' education benefits during the term or semester for which he or she applies for the Hazlewood Act Exemption, he or she is entitled to receive both federal and state veterans benefits during the same time only if the value of the federal veteran's benefits is less than the value of the student's tuition and fees, less [~~property~~] deposit and student service fees.

(c) - (f) (No change.)

(g) The [~~Beginning with admissions for spring 2006, the~~] governing board of a junior college district may establish a fee for extraordinary costs associated with a specific course or program.

(h) (No change.)

§21.2102. Eligible Veterans.

In order to be eligible to receive a Hazlewood Act Exemption, a veteran shall demonstrate that he or she:

(1) - (3) (No change.)

(4) has no federal veteran's education benefits, or, if he or she has such benefits, that the value of the benefits for the semester, including such benefits as those issued under Title 38, United States Code, Chapters 30, 32, and 35, and Title 10, United States Code, Chapters 1606 and 1607 is [~~are~~] less than the value of the student's tuition and fees less [~~property~~] deposit and student service fees for the relevant term;

(5) - (8) (No change.)

§21.2103. Eligible Children.

In order to be eligible to receive a Hazlewood Act Exemption, children shall demonstrate that they:

(1) (No change.)

(2) have no federal veteran's education benefits, based on the death or disability of a veteran parent, and that the value of the benefits is less than the value of the children's tuition and fees less [~~property~~] deposit and student service fees for the term in which the exemption is to be used; and

(3) (No change.)

§21.2104. The Application.

(a) (No change.)

(b) For an otherwise eligible veteran or child to be entitled to a Hazlewood Act exemption in a given term or semester, he or she must provide a completed Hazlewood Act Exemption Application and provide the supporting documentation to the institution no later than the census date of that term or semester. If the application or supporting documents are provided after the census date, the institution may make the award but is not required to do so.

(c) All [~~Beginning Fall 2005, all~~] institutions shall require the completed Hazlewood Act Exemption Application Form with supporting documentation for each exemption that is granted.

§21.2105. Supporting Documentation for the Hazlewood Act Exemption Application.

(a) When applying for the first time for the Hazlewood Act Exemption, a veteran shall provide to the institution, along with the Hazlewood Act Exemption Application, the following supporting documentation:

(1) (No change.)

(2) proof of the veteran's [~~or reservist's~~] current status regarding eligibility for federal veterans' [~~veterans~~] education benefits, and

(3) (No change.)

(b) When applying for the first time for the Hazlewood Act Exemption, a child shall provide to the institution, along with the Hazlewood Act Exemption Application, the following supporting documentation:

(1) - (2) (No change.)

(3) proof that the child was a dependent of the veteran at the time the veteran died, sustained his or her disabling injury, or was classified as missing in action;

(4) - (5) (No change.)

§21.2106. Subsequent Hazlewood Exemption Applications.

(a) For each term or semester of an academic year in which the veteran or child receives a Hazlewood Act Exemption, the institution shall confirm that the veteran or child:

(1) - (2) (No change.)

(3) has no federal veteran's benefits, or if he or she has federal veterans education benefits, that the value of the benefits is less than the student's tuition and fees less [~~property~~] deposit and student service fees for the term, and

(4) is not in default on an education [~~a~~] loan made or guaranteed by the State [~~state~~] of Texas and is not in default on a federal loan if that default is the reason the student cannot use his or her federal veterans' benefits [~~or federal government~~].

(b) (No change.)

§21.2108. Reporting.

(a) All institutions shall report by means of the Texas Higher Education Coordinating Board's CBM 001 report, for each eligible veteran and child who is exempted from the payment of tuition and mandatory and discretionary fees, other than [~~property~~] deposit and student service fees, the following information to the Board:

(1) - (4) (No change.)

(b) (No change.)

(c) If the individual concurrently received federal and state benefits in a given semester, institutions must adjust the data for the Board's report of all students enrolled in credit courses as of the official census date (CBM001 report) to reflect only hours paid through the Hazlewood Act Exemption.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802726
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 24, 2008
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.20

The Texas Board of Nursing (BON) proposes an amendment to 22 Texas Administrative Code §217.20 (Safe Harbor Peer Review). The proposed amendment to §217.20 is to correct the name of the section title. When this rule was adopted and published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3632), the title was "Safe Harbor Peer Review," but it should have been "Safe Harbor Peer Review for Nurses and Whistleblower Protections."

Katherine Thomas, executive director, has determined that for the first five-year period the proposed amendment is adopted there will be no fiscal implications for state or local government as a result of the title change.

Katherine Thomas, executive director, has determined that for each year of the first five years the proposal is adopted, the public benefit is that nurses and individuals will more clearly understand the scope of the rule. There will be no additional cost to small businesses or affected individuals as a result of this proposed amendment.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by email to *joy.sparks@bon.state.tx.us*; or by facsimile to (512) 305-8101.

The proposal is pursuant to the authority of Texas Occupations Code §301.151 and §301.152 that authorize the BON to adopt, enforce, and repeal rules consistent with its statutory authority under the Nursing Practice Act.

This proposal will not affect any other statutes or codes.

§217.20. Safe Harbor Peer Review for Nurses and Whistleblower Protections.

(a) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 20, 2008.

TRD-200802630
Katherine Thomas
Executive Director
Texas Board of Nursing
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-6823

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board proposes amendments to §273.4 concerning fees. The amendments raise the license renewal fees by $1.00 in order to provide funding for the appropriations made by the 80th Legislature. Amendments also change the late renewal fee for renewals one to ninety days late, and for renewals 90 to 365 days late, and the late fee for failure to timely

obtain continuing education, since these fees are based on the license renewal fee.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for local government as a result of enforcing or administering the amendments. For state government, there will be increased revenue of $3,600.00 of the first year of the biennium and each year thereafter that the amended license fee amounts are in effect. Increased revenue of $185.00 each year will be realized due to the modification of the late renewal amount. Increased revenue of less than $100 of the first year of the biennium and each year thereafter that fee amounts are in effect is expected from the amendment to the increase for late continuing education compliance.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that funding for salary adjustments authorized by the 80th Legislature will be implemented, and that licensees will timely renew licenses.

Economic Impact Statement and Regulatory Flexibility Analysis

The agency licenses approximately 3,600 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices.

The agency is funded primarily by license renewal fees. Lesser funding comes from application fees and first year license fees. To fund the statewide salary increase for agency employees authorized in the 80th Legislative Session, the agency can increase license renewal fees a very small amount, or application fees for new graduates a substantial amount. The agency believes that the small increment for all licensees is the most equitable approach. The economic costs for persons who are required to comply with the amendments, including small businesses, will be the same additional $1.00 license renewal fee increase for each license holder. No disparate effect is foreseen on small or micro-businesses as the fee is imposed on individual professionals regardless of the size of any business. Comments are solicited if a disparate cost of compliance can be established.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.304 and 351.308; and House Bill 1, 80th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession; §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act; §351.304 as setting the requirements for late renewal fees, and §351.308 as setting the fee for delayed continuing education compliance. House Bill 1 authorizes salary adjustments and the funding mechanism for the adjustments.

§273.4. Fees (Not Refundable).

(a) (No change.)

(b) Initial Therapeutic License $50.00 plus $200.00 additional fee required by §351.153 [~~Section 351.153~~] of the Act, and plus $5.00 fee required by House Bill 2985, 78th Legislature. Total fee: $255.00.

(c) Provisional License $75.00.

(d) (No change.)

(e) Duplicate License (lost, destroyed, or name change) $25.00.

(f) Duplicate/Amended Renewal Certificate (lost, destroyed, inactive, active) $25.00.

(g) License Renewal $187.00 [~~$186.00~~] plus $200.00 additional fee required by §351.153 [~~Section 351.153~~] of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include $200.00 additional fee. Total fees: $388.00 [~~$387.00~~] active renewal; $188.00 [~~$187~~] inactive renewal.

(h) License fee for late renewal, one to 90 days late: $280.50 [~~$279.00~~] plus $200.00 additional fee required by §351.153 [~~Section 351.153~~] of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include $200.00 additional fee. Total late license fees: $481.50 [~~$480.00~~] active renewal; $281.50 [~~$280.00~~] inactive renewal.

(i) License fee for late renewal, 90 days to one year late: $374.00 [~~$372.00~~] plus $200.00 additional fee required by §351.153 [~~Section 351.153~~] of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include $200.00 additional fee. Total late license fees: $575.00 [~~$573.00~~] active renewal; $375.00 [~~$373.00~~] inactive renewal.

(j) Late fees (for all renewals with delayed continuing education) $187.00. [~~$186.00~~]

(k) Therapeutic Certification Application $80.00.

(l) Duplicate Therapeutic or Optometric Glaucoma Specialist Certificate (lost, destroyed) $25.00.

(m) (No change.)

(n) Optometric Glaucoma Specialist License Application $50.00.

(o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802672
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-8502

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90 concerning Discreditable Acts.

The amendment to §501.90 will replace the word "subpoena" with the phrase "(1) a court order; or (2) a summons (a) under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, (b) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments, or (c) the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and its subsequent amendments;"; delete the phrase "under the Public Accountancy Act; or"; add the phrase "(F) in the course of a peer review under Section 901.159 of the Public Accountancy Act; or" and add the phrase "(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is consistent with the Act.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule imposes no additional responsibilities or costs above those the Legislature already ordered.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.90. Discreditable Acts.

A person shall not commit any act that reflects adversely on that person's [~~his~~] fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining registration under the Act or in obtaining a license to practice public accounting;

(2) dishonesty, fraud or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Subchapter J or §901.458 of the Act applicable to a person certified or registered by the board;

(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;

(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm;

(6) cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state;

(7) suspension or revocation of or any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action;

(8) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(9) fiscal dishonesty or breach of fiduciary responsibility of any type;

(10) failure to comply with a final order of any state or federal court;

(11) repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(12) misrepresenting facts or making a misleading or deceitful statement to a client;

(13) false swearing or perjury in any communication to the board or any other federal or state regulatory or licensing body;

(14) threats of bodily harm or retribution to a client;

(15) public allegations of a lack of mental capacity of a client which cannot be supported in fact;

(16) voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to: [~~a subpoena or other compulsory process~~];

(i) a court order; or

(ii) a summons

(I) under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments,

(II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments, or

(III) the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and its subsequent amendments;

(D) in an investigation or proceeding by the board; [~~under the Public Accountancy Act; or~~]

(E) in an ethical investigation conducted by a professional organization of certified public accountants; or [~~and~~]

(F) in the course of a peer review under Section 901.159 of the Public Accountancy Act; or

(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.

(17) breaching the terms of an agreed consent order entered by the Board or violating any Board Order.

(18) Interpretive Comment: The board has found in §519.7 of this title (relating to Misdemeanors that Subject a Person to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, a License, or Renewal of a License for Persons with Criminal Backgrounds) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802716

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §501.93

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.93 concerning Responses.

The amendment to §501.93 will add the word and phrase "either" in writing and "or through the board's website," to subsection (d).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify board procedures which are in keeping with currently accepted standard office practices.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because, by eliminating paper and postage by communicating through our website, small business should save money.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the

proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.93. Responses.

(a) A person shall substantively respond in writing to any communication from the board requesting a response, within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the communication was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, facsimile number, or e-mail address furnished to the board by the applicant or person.

(b) A person shall provide copies of documentation and/or work papers in response to the board's request at no expense to the board within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the request was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, facsimile number or e-mail address furnished to the board by a person. A person may comply with this subsection by providing the board with original records for the board to duplicate. In such a circumstance, upon request the board will provide an affidavit from the custodian of records documenting custody and control of the records.

(c) Failure to timely respond substantively to written communications, or failure to furnish requested documentation and/or work papers, constitutes conduct indicating lack of fitness to serve the public as a professional accountant.

(d) Each applicant and each person required to be registered with the board under the Act shall notify the board, either in writing or through the board's website, of any and all changes in either such person's mailing address or telephone number and the effective date thereof within 30 days before or after such effective date.

(e) Interpretive Comment. This section should be read in conjunction with §519.6 of this title (relating to Subpoenas).

(f) Interpretive Comment. In this section, the term board includes board staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802731
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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CHAPTER 511. ELIGIBILITY

SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58 concerning Definitions of Related Business Subjects.

The amendment to §511.58 will insert "approved by the board and" in subsection (c).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify the existing rule and the requirements for the required ethics course.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it will not affect small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.58. Definitions of Related Business Subjects.

(a) An individual who holds a baccalaureate degree from a recognized educational institution may take related business courses offered at an accredited community college, provided they are recognized as upper level courses for a 4-year BBA degree from an institution recognized by the board.

(b) The board will accept not fewer than 24 passing semester hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas. Not more than 6 semester hours taken in any subject area may be used to meet the minimum hour requirement.

(1) business law, including study of the Uniform Commercial Code;

(2) economics;

(3) management;

(4) marketing;

(5) business communications;

(6) statistics;

(7) technical writing (covering subjects such as opinions, tax planning reports, and management advisory services reports and management letters);

(8) finance;

(9) information systems or technology; and

(10) other areas related to accounting.

(c) In addition to the 24 hours required in subsection (b) of this section, the board requires that 3 passing semester hours be earned as a result of taking a course in ethics. The course must be approved by the board and taken at a recognized educational institution and should include core values such as ethical reasoning, integrity, objectivity and independence.

(d) Credit for hours taken at recognized colleges and universities using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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SUBCHAPTER F. EXPERIENCE REQUIREMENTS

22 TAC §511.122

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.122, concerning Acceptable Work Experience.

The amendment to §511.122 will insert the following text "attest services as defined in §501.52(4) of this title (relating to Definitions), or professional accounting services or professional accounting work as defined in §501.52(21) of this title, and"; insert the following text "or higher" after text "level" and insert text "add skills" after the text "knowledge" in subsection (b); in subsection (c)(5) replace the following text "as approved by the board will" with the following text "on a full time basis may"; add subsection (c)(8) with the following text "Self employment may not be used to satisfy the work experience requirement unless approved by the Board."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies what constitutes acceptable work experience.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be

impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.122. Acceptable Work Experience.

(a) Work experience shall be under the supervision of a CPA experienced in the non-routine accounting area assigned to the candidate and who holds a current license issued by this board or by another state board of accountancy as defined in §511.124 of this title (relating to Acceptable Supervision).

(b) Non-routine accounting involves attest services as defined in §501.52(4) of this title (relating to Definitions), or professional accounting services or professional accounting work as defined in 501.52(21) of this title, and the use of independent judgment, applying entry level or higher professional accounting knowledge and skills to select, correct, organize, interpret, and present real-world data as accounting entries, reports, statements, and analyses extending over a diverse range of tax, accounting, assurance, and control situations.

(c) All work experience, to be acceptable, shall be gained in the following categories or in any combination of these.

(1) Client practice of public accountancy. All work experience gained in a firm in the client practice of public accountancy must be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. If such firm is a CPA firm it shall be in good standing with the board, or, if the experience is gained in another state or territory, the firm shall be in good standing and in compliance with all laws applicable to CPA firms of that state or territory.

(2) Industry. All work experience gained in industry shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. Acceptable industry work experience includes:

(A) internal auditor;

(B) staff, fund or tax accountant;

(C) accounting, financial or accounting systems analyst; and

(D) controller.

(3) Government. All work experience gained in government shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters and which meets the criteria in subparagraphs (A) - (E) of this paragraph. The board will review on a case-by-case basis experience which does not clearly meet the criteria identified in subparagraphs (A) - (E) of this paragraph. Acceptable government work experience includes but is not limited to:

(A) employment in state government as an accountant or auditor at Salary Classification B6 or above, or a comparable rating;

(B) employment in federal government as an accountant or auditor at a GS Level 7 or above;

(C) employment as a special agent accountant with the FBI;

(D) military service, as an accountant or auditor as a Second Lieutenant or above; and

(E) employment with other governmental entities as an accountant or auditor.

(4) Law firm. All work experience gained in a law firm shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters comparable to the experience ordinarily found in a CPA firm, shall be under the supervision of a CPA or an attorney, and shall be in one or more of the following areas:

(A) tax--planning, compliance and litigation and;

(B) estate planning.

(5) Education. Work experience gained as an instructor at a college or university will qualify if evidence is presented showing independent thought and judgment was used on non-routine accounting matters. Only the teaching of upper division courses on a full time basis may [~~as approved by the board will~~] be considered. All experience shall be supervised by the department chair or faculty member who is a CPA.

(6) Internship. The Board will consider, on a case-by-case basis, experience acquired through the accounting internship program, provided [~~evidence is submitted demonstrating~~] that the experience was non-routine accounting as defined by this title. [~~comparable to that of a full-time staff accountant in non-routine accounting matters.~~] If an accounting internship course is counted toward fulfilling the education requirement, the internship may not be used to fulfill the work experience requirement.

(7) Other. Work experience gained in other positions may be approved by the board as experience comparable to that gained in the practice of public accountancy under the supervision of a CPA upon certification by the person or persons supervising the candidate that the experience was of a non-routine accounting nature which continually required independent thought and judgment on important accounting matters.

(8) Self employment may not be used to satisfy the work experience requirement unless approved by the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802724
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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CHAPTER 512. CERTIFICATION BY RECIPROCITY

22 TAC §512.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.1 concerning Certification as a Certified Public Accountant by Reciprocity.

The amendment to §512.1, Certification as a Certified Public Accountant by Reciprocity, will replace the word "person" with the word "individual" throughout the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule since only individuals are subject to reciprocal provisions.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment does not place any additional responsibilities or costs on small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§512.1. Certification as a Certified Public Accountant by Reciprocity.

(a) The certificate of a "certified public accountant" shall be granted by reciprocity to any individual [~~person~~] who is qualified under §901.259 or §901.260 of the Act. The individual's [~~person's~~] certificate or credentials in the original jurisdiction must be in good standing when the application is submitted and remain in good standing until the individual's [~~person's~~] application for certification by reciprocity has been approved and a certificate has been issued to the individual [~~person~~] by this board.

(b) An individual [~~A person~~] from a domestic jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) satisfying one of the following conditions:

(A) the individual [~~person~~] holds a certificate or license to practice public accountancy from a domestic jurisdiction that has been determined by the board pursuant to §512.2 of this title (relating to National Association of State Boards of [~~Public~~] Accountancy Verified Substantially Equivalent Jurisdictions) as having substantially equivalent requirements for certification; or

(B) the individual [~~person~~] holds a certificate or license to practice public accountancy from a domestic jurisdiction that has not been determined by NASBA and the board to have substantially equivalent certification requirements but has had his education, examination and experience verified as substantially equivalent to those required by the Uniform Accountancy Act by NASBA; or

(C) the individual [~~person~~] meets all requirements for issuance of a certificate set forth in the Act other than the provision requiring proof of grades to be eligible to take the uniform CPA examination; or

(D) the individual [~~person~~] met the requirements in effect for issuance of a certificate in this state on the date the person was issued a certificate or license by another domestic jurisdiction; or

(E) after passing the uniform CPA examination, the individual [~~person~~] has completed at least four years of experience practicing public accountancy within the ten year period immediately preceding the date of application in this state; and

(2) the individual [~~person~~] meets the CPE requirements applicable to certificate holders contained in Chapter 523 of this title (relating to Continuing Professional Education).

(c) A individual [~~person~~] from a foreign jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) holding a credential that has not expired or been revoked, suspended, limited or probated, that entitles the holder to issue reports on financial statements issued by a licensing authority or professional accountancy body of another country that:

(A) regulates the practice of public accountancy and whose requirements to obtain the credential have been determined by the board to be substantially equivalent to the requirements of education, examination and experience contained in the Act; and

(B) grants credentials by reciprocity to individuals [~~persons~~] certified to practice public accountancy by this state;

(2) receiving that credential based on education and examination requirements that were comparable to or exceeded those required by the Act at the time the credential was granted;

(3) completing an experience requirement in the foreign jurisdiction that issued the credential that is comparable to or exceeds the experience requirement of the Act or has at least four years of professional accounting experience in this state;

(4) passing an international qualifying examination (IQEX) covering national standards that has been approved by the board; and

(5) passing an examination covering the laws, rules and code of professional conduct in effect in this state that has been approved by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802718
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §512.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.2, concerning National Association of State Boards of Accountancy Verified Substantially Equivalent Jurisdictions.

The amendment to §512.2(c) will replace the phrase "a person" with "an individual".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify the rule and provide more consistent terminology through out the rules.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it does not place any additional responsibilities or costs on small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§512.2. National Association of State Boards of Accountancy Verified Substantially Equivalent Jurisdictions.

(a) - (b) (No change.)

(c) An individual [~~A person~~] who has a valid certificate to practice as a certified public accountant from a domestic jurisdiction that has not been verified as substantially equivalent to the Uniform Accountancy Act by NASBA may obtain a verification from NASBA's National Qualification Appraisal Service that his personal education, examination and experience are comparable to or exceed the education, examination and experience requirements for certification contained in the Uniform Accountancy Act. The board shall consider an individual [~~a person~~] whose personal education, examination and experience has been verified by NASBA to be substantially equivalent as being from an approved substantially equivalent domestic jurisdiction for certification by reciprocity under this chapter and for registration of out-of-state practitioners with substantially equivalent qualifications under Chapter 513 of this title (relating to Registration).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802757
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §512.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.4, concerning Application for Certification by Reciprocity.

The amendment to §512.4(a) will replace the phrase "A person" with "An individual" and delete the phrase "and submitted to the executive director".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will simplify the reciprocity process.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it does not impose any additional responsibilities or costs on small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§512.4. Application for Certification by Reciprocity.

(a) An individual [~~A person~~] seeking certification by reciprocity must apply for certification on a form prescribed by the board [~~and submitted to the executive director~~]. The application must be accompanied by the requisite fee and shall include written authorization from the applicant empowering the board to obtain all information concerning the applicant's qualifications and present standing.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802732
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §512.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.6, concerning Reciprocal Fee.

The amendment to §512.6 will replace the phrase "A person" with "An individual" in subsection (a) and replace the word "void" with the phrase "deemed denied" in subsection (b).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify the effect of failure to complete timely the reciprocal application process.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it will not affect small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§512.6. Reciprocal Fee.

(a) An individual [~~A person~~] making application for a certificate by reciprocity must submit a processing fee and a professional fee as stated in §521.3 of this title (relating to Fee for Certification by Reciprocity). If the application is approved by the board, the individual must then pay the license fee upon receipt of the license notice.

(b) All the requirements for certification must be completed by the applicant within six months after board's date of receipt of the application. If all the requirements are not completed within six months, the application will be deemed denied [~~void~~]. The professional fee will be refunded to the applicant. The processing fee paid will not be refunded to the applicant.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200802733
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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CHAPTER 513. REGISTRATION

SUBCHAPTER A. REGISTRATION OF CPAS OF OTHER STATES AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES

22 TAC §513.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.1 concerning Registration of Foreign Practitioners with Substantially Equivalent Qualifications.

The amendment to §513.1 will replace the word "person" with "individual".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify the requirements for foreign practitioners with substantially equivalent qualifications to register with the board.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it will not affect small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the

Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.1. Registration of Foreign Practitioners with Substantially Equivalent Qualifications.

An individual [~~A person~~] who holds a valid certificate or other credential issued by a foreign jurisdiction that allows the individual [~~person~~] to practice public accountancy in the issuing jurisdiction may, if that certificate or credential remains in good standing in the issuing jurisdiction, make application for registration with the board upon a prescribed form. The application must be accompanied by the requisite fee and must include written authorization empowering the board to obtain all information concerning the applicant's qualifications and the requirements for licensing by the issuing foreign jurisdiction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.10, concerning Eligibility for Firm License.

The amendment to §513.10(a) will replace the word "persons" with "individuals" in paragraph (1); and replace the phrase "a person" with "an individual" in paragraph (2).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be provide more consistent terminology through out the rules.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because does not place any additional responsibilities or costs on small business.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.10. Eligibility for Firm License.

(a) To be eligible for a firm license, the firm must show:

(1) that a majority of the ownership of the firm, in terms of both financial interests and voting rights, belongs to individuals [~~persons~~] who hold certificates issued under this chapter or are licensed as a CPA in another state; and

(2) that all attest services performed in this state are under the supervision of an individual [~~a person~~] who holds a certificate issued by the board or by another state.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §513.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.11, concerning Qualifications for Non-CPA Owners of Firm License Holders.

The amendment to §513.11 will replace the phrase "a natural person" with "an individual" in subsection (a)(1); replace the phrase "involved in the firm" with "providing personal services in the nature of management of some portion of the firm's business interests or performing services for clients of the firm" in subsection (a)(2); add the phrase "as determined by the board" to subsection (b)(4); delete subsection (c); reletter subsection (d) as subsection (c); replace the word "Owner" with the phrase "A Non-CPA Owner" and replace the word "person" with "individual".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify the substantive nature of the involvement required of a non-licensed individual owner.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it does not place any additional responsibilities or costs on small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.11. Qualifications for Non-CPA Owners of Firm License Holders.

(a) A firm which includes non-CPA owners may not qualify for a firm license unless every non-CPA owner of the firm:

(1) is an individual [~~a natural person~~];

(2) is actively providing personal services in the nature of management of some portion of the firm's business interests or performing services for clients of the firm [~~involved in the firm~~] or an affiliated entity; and

(3) (No change.)

(b) Each of the non-CPA owners who are residents of the State of Texas must also:

(1) - (3) (No change.)

(4) hold a baccalaureate or graduate degree conferred by a college or university within the meaning of §511.52 of this title (pertaining to Recognized Colleges and Universities) or equivalent education as determined by the board; and

(5) (No change.)

[~~(c) "Actively involved" means providing personal services in the nature of management of some portion of the firm's business interests or performing services for clients of the firm.~~]

(c) [~~(d)~~] A "Non-CPA Owner" [~~"Owner"~~] includes any individual [~~person~~] who has any financial interest in the firm or any voting rights in the firm.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §513.12

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.12, concerning Application for Firm License.

The amendment to §513.12(a) will replace the word "upon" with "on"; delete the phrase "and submitted to the executive director"; add the word "an"; and delete the phrase "in this state".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to simplify the rule and provide more consistent terminology through out the rules.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it does not place any additional responsibilities or costs on small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.12. Application for Firm License.

(a) Application for a firm license must be made on [~~upon~~] a form prescribed by the board [~~and submitted to the executive director~~]. The application must be accompanied by an affidavit of an individual owner who holds a license to practice public accountancy [~~in this state~~] affirming that all statements are true and correct.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §513.13

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.13 concerning Certification of Corporate Franchise Tax Status.

The amendment to §513.13 will replace the phrase "Each corporation or professional limited liability company required to obtain a firm license shall certify in its application for a license, that the corporation's Texas franchise taxes are current." with the phrase "Each firm subject to the Texas franchise tax must certify in its application for a firm license that its Texas franchise taxes are current." in subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify the annual reporting requirement of all firms.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule merely clarifies that all firms subject to the state franchise tax must answer the question whether their state franchise taxes are current on the already-required form.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.13. Certification of Corporate Franchise Tax Status.

(a) Each firm subject to the Texas franchise tax must certify in its application for a firm license that its Texas franchise taxes are current.

~~[(a) Each corporation or professional limited liability company required to obtain a firm license shall certify in its application for a license, that the corporation's Texas franchise taxes are current.]~~

(b) The making of a false statement as to corporate franchise tax status on any license application or renewal as described in subsection (a) of this section is grounds for suspension or revocation of the license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §513.14

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Public Accountancy (Board) proposes the repeal of §513.14, concerning Affidavit of Firm.

The proposed repeal of §513.14 will omit a rule that is no longer relevant.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be none.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a rule that is no longer relevant.

The probable economic cost to persons required to comply with the repeal will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the repeal will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002.

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§513.14. Affidavit of Firm.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §513.15

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.15 concerning Firm Offices.

The amendment to §513.15 will replace the phrase "Certified Public Accountancy Firm" with the phrase "certified public accountancy firm" in subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer, grammatically correct rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it does not place any additional responsibilities or costs on small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.15. Firm Offices.

(a) A certified public accountancy firm [~~Certified Public Accountancy Firm~~] must hold a license for each office located in Texas.

(b) Each office of a firm must be under the direct supervision of a resident manager. A resident manager may be an owner, member, partner, shareholder, or employee of the firm and must be licensed under the Act.

(c) A resident manager may supervise more than one office provided that the firm's application for issuance or renewal of the firm license or registration identifies each of the offices the resident manager will supervise.

(d) A resident manager is responsible for the supervision of professional services and may be held responsible for the violations of the Act or Rules for the activities of each office under his supervision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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CHAPTER 515. LICENSES

22 TAC §515.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.1 concerning License.

The amendment to §515.1 will add the phrase "and a license shall not be issued or renewed unless the board has received all required fees, continuing professional education and a completed application have been received by the board" and delete the statement "(c) A license shall not be issued or renewed unless all required fees, continuing professional education and a completed application have been received by the board."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clear succinct rule that all routine renewal procedures must be completed to renew your license.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it places no new or additional requirements or costs on anyone including small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.1. License.

(a) Individuals certified or registered by this board must obtain a license for each 12-month interval and a license shall not be issued or renewed unless the board has received all required fees, continuing professional education and a completed application.

(b) Subject to §515.3 of this title (relating to License Renewal for Individuals and Firm Offices) firms registered with the board must obtain a license for each office associated with the firm.

[~~(c) A license shall not be issued or renewed unless all required fees, continuing professional education and a completed application have been received by the board.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §515.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.3 concerning License Renewals for Individuals and Firm Offices.

The amendment to §515.3 will add the phrase "(a) License renewals for individuals shall be as follows:"; renumber subsection (a) to (a)(1); delete "will"; will add the phrase "following the initial licensing period"; will add a new subsection (a)(2) "An individual's license will not be renewed if the individual has not earned the required continuing professional education credit hours, completed all application parts including all parts of the signed renewal and completed the affidavit reporting area on the renewal form"; will add new "(b) License renewal for firm offices shall be as follows:"; renumber subsection (c) to subsection (b)(1); delete "Staggered firm license expiration dates begin on January 1, 2007."; renumber subsection (d) to subsection (b)(2); renumber subsection (c) to subsection (b)(3); insert "This does not apply to firms providing work pursuant to the practice privilege provisions of this title."; renumber subsection (f) to subsection (b)(4); replace the phrase "notified the board of the peer review date assigned by a board approved sponsoring organization." with the phrase "met the peer review requirements as defined in Chapter 527 of this title (relating to Peer Review)."; delete "notified the board of the peer review date assigned by a board approved sponsoring organization."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of the requirements necessary for the board to issue licenses.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses because the rule merely clarifies existing requirements for a license.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.3. License Renewals for Individuals and Firm Offices.

(a) License renewals for individuals shall be as follows:

(1) [~~(a)~~] Licenses for individuals [~~will~~] have staggered expiration dates based on the last day of the individuals' birth months. The license will be issued for a 12-month period following the initial licensing period.

(2) An individual's license will not be renewed if the individual has not earned the required continuing professional education credit hours, completed all application parts including all parts of the signed renewal and completed the affidavit reporting area on the renewal form.

(3) [~~(b)~~] At least 30 days before the expiration of an individual's license, the board shall send written notice of the impending license expiration to the individual at the last known address according to board records.

(b) License renewal requirements for firm offices shall be as follows:

(1) [~~(c)~~] Licenses for offices of firms [~~will~~] have staggered expiration dates for payment of fees, which are [~~will be~~] due the last day of a board assigned renewal month. All offices of a firm will have the same renewal month. [~~Staggered firm license expiration dates begin on January 1, 2007.~~] All firms will be issued a license for a 12-month period following the initial licensing period.

(2) [~~(d)~~] At least 30 days before the expiration of a firm's office license, the board shall send written notice of the impending license expiration to the main office of the firm at the last known address according to the records of the board.

(3) [~~(e)~~] A firm's office license shall not be renewed unless the sole proprietor, each partner, officer, director, or shareholder of the firm who is listed as a member of the firm and who is certified or registered under the Act has a current individual license. This does not apply to firms providing work pursuant to the practice privilege provisions of this title.

(4) [~~(f)~~] If a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has met the peer review requirements as defined in Chapter 527 of this title (relating to Peer Review). [~~notified the board of the peer review date assigned by a board approved sponsoring organization.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §515.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.4 concerning License Cancellation.

The amendment to §515.4 will replace the phrase "office's licenses with the phrase "office(s) license(s)"; delete the sentence "A firm will not be considered in good standing until all of its office licenses have been issued".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of the requirements necessary to renew a license.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it imposes no new or additional responsibilities or costs on small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.4. License Cancellation.

Failure to submit to the board a completed renewal notice, the renewal fee and any other required documents before the license expiration date will result in the cancellation of the individual's or the firm office('s) license(s). [~~office's license. A firm will not be considered in good standing until all of its office licenses have been issued.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §515.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.5 concerning Reinstatement of a License.

The amendment to §515.5 will replace the phrase "a person" with "an individual" in subsection (a), (b) and (c); replace the word "application" with the phrase "submitting an affidavit for reinstatement"; in subsection (c) replace subparagraphs "(1) paying the board a fee that is equal to two times the normally required renewal fee for the license; (2) providing the Board, within 90 days of the date of the Board's receipt of the application for reinstatement, a complete application including evidence of the required licensure; and (3) demonstrating that the out of state license is no more than 90 days beyond the normal expiration date of the license." with paragraphs "(1) providing the Board, within 90 days of the date of the Board's receipt of the affidavit for reinstatement, a complete application including evidence of the required licensure; (2) demonstrating that the out of state license is no more that 90 days beyond the normal expiration date of the license; (3) paying the board a fee that is equal to two times the normally required renewal fee for the license; and (4) meeting the other requirements for licensing."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of the requirements to get an expired license reinstated.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule does not place any significantly different responsibilities on small business; it merely uses terminology consistent with the rest of the rules.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.5. Reinstatement of a License.

(a) An individual [~~A person~~] whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1 1/2 times the normally required renewal fee.

(b) An individual [~~A person~~] whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(c) An individual [~~A person~~] whose license has been expired for at least one year but less than two years may renew the license by paying to the board a renewal fee that is equal to three times the normally required renewal fee.

(d) A licensee who was revoked under §901.502(3) or (4) of the Act, has moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of submitting a complete application may obtain a new license without reexamination by:

(1) providing the Board, within 90 days of the date of the Board's receipt of a complete application including evidence of the required licensure;

(2) demonstrating that the out of state license is no more that 90 days beyond the normal expiration date of the license;

(3) paying the board a fee that is equal to two times the normally required renewal fee for the license; and

(4) meeting the other requirements for licensing

[~~(1) paying the board a fee that is equal to two times the normally required renewal fee for the license;~~]

[~~(2) providing the Board, within 90 days of the date of the Board's receipt of the application for reinstatement, a complete application including evidence of the required licensure; and~~]

[~~(3) demonstrating that the out of state license is no more than 90 days beyond the normal expiration date of the license.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802751

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §515.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.8 concerning Retirement Status or Permanent Disability.

The amendment to §515.8 will delete the phrase "who holds a current license"; add the words "at least"; replace the phrase "the licensee is no longer employed" with the phrase "that he has no association with accounting work for compensation"; replace the phrase "A certificate or registration holder" with the phrase "An individual" in subsection (a), (b) and (d); replace the phrase "since he was granted disability status" with the phrase "as required by §523.112(5)" in paragraph (3) of subsection (a); and replace the word "licensee" with the word "individual".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will, by using terminology consistent with the rest of the rule, provide a clearer understanding of the requirements for retirement and/or permanent disability status.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it imposes no new responsibilities or costs on small business; it merely uses terminology consistent with the rest of the rules.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.8. Retirement Status or Permanent Disability.

(a) Retired status. An individual [~~who holds a current license~~] who is at least 60 years old and has filed a request on a form prescribed by the board stating that he has no association with accounting work for compensation [~~the licensee is no longer employed~~] may be granted retired status at the time of license renewal. An individual [~~A certificate or registration holder~~] who has been granted retired status and who reenters the work force in a position that has an association with accounting work for which he receives compensation automatically loses the retired status. Upon reentry into the workforce under such conditions, the individual [~~certificate or registration holder~~] must notify the board and request a new license renewal notice and:

(1) pay the license fee established by the board for the period since he became employed;

(2) complete a new license renewal notice; and

(3) meet the continuing professional education requirements for the period since he was granted the retired status as required by §523.112(5) of this title (relating to Mandatory CPE Attendance).

(b) Permanent disability status. Permanent disability status may be granted to a individual [~~certificate or registration holder~~] who submits to the board a statement and a notarized affidavit from the licensee's physician stating that the individual [~~certificate or registration holder~~] is unable to work and clearly details the disability. This status may be granted only at the time of license renewal. An individual [~~A certificate or registration holder~~] who has been granted permanent disability status and who reenters the work force in a position that has an association with accounting work for which he receives compensation automatically loses the permanent disability status. Upon reentry into the workforce under such conditions, the individual [~~certificate or registration holder~~] must notify the board and request a new license renewal notice and:

(1) pay the license fee established by the board for the period since he became employed;

(2) complete a new license renewal notice; and

(3) meet the continuing professional education requirements for the period pursuant to §523.112(3)(D) of this title [~~since he was granted disability status~~].

(c) For purposes of this section the term "association with accounting work" shall include the following:

(1) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(2) representing to the public, including an employer, that the individual [~~licensee~~] is a CPA or public accountant in connection with the sale of any services or products involving accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(3) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(4) for purposes of making a determination as to whether the individual [~~licensee~~] fits one of the categories listed in subsections (a) or (b) of this section, the questions shall be resolved in favor of inclusion of the work as in "association with accounting work."

(d) All board rules and all provisions of the Act apply to an individual [~~a certificate or registration holder~~] in retired or permanent disability status.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

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J. Randel (Jerry) Hill
General Counsel
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22 TAC §515.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.9 concerning Collection of License Fees Following Disciplinary Action.

The amendment to §515.9 will replace the words "individual" and "certificate, license, or registration holder" with the word "person"; replace the "," with the word "or" and delete the phrase "or temporary permit".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to make a clearer rule by using terminology consistent with the rest of the rules.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendments imposes no additional responsibilities or costs on small business; they merely use terminology consistent with the rest of the rules.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.9. Collection of License Fees Following Disciplinary Action.

(a) A person [~~A certificate or registration holder~~] whose certificate, license or registration, has been suspended or revoked by the board for failure to comply with the Board's Rules of Professional Conduct, exclusive of §501.94 of this title (relating to Mandatory Continuing Professional Education), will not be assessed license fees and penalties for the license years during which the certificate, license or registration was suspended or revoked but the person [~~individual~~] must pay prorated license year fees for that portion of the license period for which reinstatement of the certificate, license or registration is granted.

(b) The board will not refund any fees paid for the license year in which the suspension or revocation occurs.

(c) If the certificate, license, or registration was suspended or revoked for non-payment of annual license fees or failure to comply with §501.94 of this title [~~(relating to Mandatory Continuing Professional Education)~~], upon written application the executive director will decide on an individual basis whether the fees and penalties must be paid for the license years of suspension or revocation and whether any fee exemption is applicable.

(d) It is the responsibility of the person [~~certificate, license, or registration holder~~] whose certificate, license or[~~,~~] registration [~~or temporary permit~~] is suspended to apply to the board for the issuance of a certificate, license, or registration upon termination of suspension.

(e) Continuing professional education requirements are addressed in Chapter 523 of this title (relating to Continuing Professional Education).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Board of Public Accountancy
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22 TAC §515.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.10 concerning Licenses for Certificate Holders with Defaulted Student Loans.

The amendment to §515.10 will replace the words "licensee" and "licensee's" with the words "individual" and "individual's"; replace the words "person" and "persons" with the words "individual" and "individuals"; and replace the words "Certificate Holders" with the word "Individuals" in the section title.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule using terminology consistent with the rest of the rules.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment does not impose any additional costs or responsibilities on small business; it merely used terminology consistent with the rest of the rules.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.10. Licenses for Individuals [~~Certificate~~ ~~Holders~~] with Defaulted Student Loans.

(a) The board shall not renew the license of an individual [~~a licensee~~] whose name appears on the list of individuals [~~persons~~] who are in default of loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) and in default of repayment agreements unless:

(1) the renewal is the first renewal following the board's receipt of the list including the individual's [~~licensee's~~] name among those in default; or

(2) the individual [~~licensee~~] presents a certificate issued by TGSLC certifying that:

(A) the individual [~~licensee~~] has entered a repayment agreement on the defaulted loan; or

(B) the individual [~~licensee~~] is not in default on a loan guaranteed by TGSLC.

(b) The board may issue initial licenses to persons whose names appear on the list of individuals [~~persons~~] who are in default of loans guaranteed by TGSLC if that individual [~~person~~] meets the qualifications for licensure established by the board; provided, however, that the board shall not renew the license unless the individual [~~person~~] presents a certificate issued by TGSLC certifying that:

(1) the individual [~~licensee~~] has entered into a repayment agreement on the defaulted loan; or

(2) the individual [~~licensee~~] is not in default on a loan guaranteed by TGSLC.

(c) The board shall provide individuals [~~licensees~~] with the opportunity to have a public hearing pursuant to the board's rules prior to taking action concerning nonrenewal of licenses for default of student loans.

(d) The board's nonrenewal policy shall be printed on each license renewal notice and license application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §515.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.11 concerning Exemption from Payment of the Professional Fee for Other than State of Texas Government Employees.

The amendment to §515.11 will delete the phrase "including as an employee, independent contractor, sole practitioner, partner, limited liability partner, shareholder of a professional corporation, or shareholder of a limited liability company" and replace "licensee shall" with "individual will" in subsection (a)(2); and replace the word "licensee" with "individual" throughout the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule due to the elimination of redundant language.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment does not impose any additional responsibilities or costs on small business; it just simplified the rule, e.g., the phrase "in any manner" doesn't need any further elaboration.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must

be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.11. Exemption from Payment of the Professional Fee for Other than State of Texas Government Employees.

(a) The board may grant an exemption from the payment of the professional fee to an individual [~~a licensee~~] employed by the federal government, the government of another state, or a municipal or county government of this state. To receive the exemption, the individual [~~licensee~~] must submit a notarized affidavit to the board attesting to the following:

(1) the individual [~~licensee~~] is employed by one of the governmental entities identified in this subsection and is restricted by virtue of the employment from performing any accounting services for anyone other than the employing governmental entity; and

(2) the individual will [~~licensee shall~~] not engage in the client practice of public accountancy in any manner [~~including as an employee, independent contractor, sole practitioner, partner, limited liability partner, shareholder of a professional corporation, or shareholder of a limited liability company~~] during the license period for which the exemption is granted.

(b) If the the individual [~~licensee~~] subsequently engages in the client practice of public accountancy, the individual [~~licensee~~] must immediately report this fact to the board's Licensing Division and must pay the professional fee for that license period, which will not be prorated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802755
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §515.12

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.12 concerning Exemption from Payment of the Professional Fee for State of Texas Employees.

The amendment to §515.12 will delete the phrase "including as an employee, independent contractor, sole practitioner, partner, limited liability partner, shareholder of a professional corporation, or shareholder of a limited liability company" in paragraph (2) of subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer less repetitive rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment does not impose any additional responsibilities or costs on small business; it just simplifies the rule.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be

impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.12. Exemption from Payment of the Professional Fee for State of Texas Employees.

(a) The board may grant an exemption from the payment of the professional fee to an individual [~~a licensee~~] employed by the State of Texas. To receive the exemption, the individual [~~licensee~~] must submit a notarized affidavit to the board attesting to the following:

(1) the individual [~~licensee~~] is an employee of the State of Texas and the agency at which the individual [~~licensee~~] is employed has authorized payment of the professional fee on the individual's [~~licensee's~~] behalf; and

(2) the individual [~~licensee~~] shall not engage in the client practice of public accountancy in any manner [~~including as an employee, independent contractor, sole practitioner, partner, limited liability partner, shareholder of a professional corporation, or shareholder of a limited liability company~~] during the license period for which the exemption is granted.

(b) If the individual [~~licensee~~] subsequently engages in the client practice of public accountancy, the individual [~~licensee~~] must immediately report this fact to the board's Licensing Division and must pay the professional fee for the license period, which will not be prorated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802756
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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CHAPTER 517. PRACTICE BY CERTAIN OUT OF STATE FIRMS AND INDIVIDUALS

22 TAC §517.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §517.1, concerning Practice by Certain Out of State Firms.

The amendment to §517.1 will replace the word "with" with the phrase "that has" in subsection (a)(2) and in subsection (c)(2).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment merely clarified the rule and places no additional burden or costs on small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§517.1. Practice by Certain Out of State Firms.

(a) A firm is required to hold a firm license if the firm:

(1) establishes or maintains an office in this state; or

(2) performs for an entity that has [~~with~~] its principal office in this state:

(A) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards;

(B) an examination of prospective financial information that is to be performed in accordance with the Statements on Standards for Attestation Engagements; or

(C) an engagement that is to be performed in accordance with auditing standards of the Public Company Accounting Oversight Board or its successor.

(b) A certified public accountancy firm that is licensed and has its primary place of business in another state and is not required to hold a firm license pursuant to subsection (a) of this section may practice in this state without a firm license or notice to the board if the firm's practice in this state is performed by an individual who holds a license under Chapter 515 of this title or who practices under a privilege pursuant to §517.2 of this chapter.

(c) A firm described by subsection (b) of this section may exercise all the practice privileges of a firm license holder, except that the firm:

(1) may not perform the services described by subsection (a)(2) of this section; and

(2) may perform an engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board, or any other assurance service required by the board to be performed in accordance with professional standards adopted by the American Institute of Certified Public Accountants or another national organization adopted by the board, for an entity that has [~~with~~] its principal office in this state only if:

(A) the firm meets the requirements of §901.354(a) and (b) of the Act;

(B) the firm complies with the board's peer review program found in Chapter 527 of these rules; and

(C) the services are performed by an individual who holds a license under this chapter or practices under a privilege provided in §517.2 of this chapter and §901.462 of the Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802721

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: July 6, 2008

For further information, please call: (512) 305-7848

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22 TAC §517.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §517.2, concerning Practice by Certain Out of State Individuals.

The amendment to §517.2 will replace the word "with" with the phrase "that has".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment merely clarified the rule and places no additional burden on small business.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§517.2. Practice by Certain Out of State Individuals.

(a) An individual who holds a certificate or license as a certified public accountant issued by another state and whose principal place of business is not in this state may exercise all the privileges of certificate and license holders of this state without obtaining a certificate or license under this chapter if:

(1) the National Association of State Boards of Accountancy's National Qualification Appraisal Service has verified that the

other state has education, examination, and experience requirements for certification or licensure that are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter; or

(2) the individual obtains from the National Association of State Boards of Accountancy's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter.

(b) An individual who meets the requirements of subsection (a)(1) or (2) of this section and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the board.

(c) An individual practicing under this section must practice through a firm that holds a license under this title if, for an entity that has [~~with~~] its principal office in this state, the individual performs:

(1) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards;

(2) an examination of prospective financial information that is to be performed in accordance with the Statements on Standards for Attestation Engagements; or

(3) an engagement that is to be performed in accordance with auditing standards of the Public Company Accounting Oversight Board or its successor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802738
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.1 concerning Individual License Fees.

The amendment to §521.1 will replace the fee of "$45.00" with the fee of "$30.00" and replace the word "shall" with the word "will".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be an adjustment in the fees to be collected to better mirror revenue (including the increased number of applicants) and expenses.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses; the new lower licensing costs will benefit small business CPA firms and potentially help their small business clients.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.1. Individual License Fees.

(a) The fee for a license issued to an individual not in retired or disabled status will [~~shall~~] be $30.00 [~~$45.00~~] for the license fee and $10.00 for the Scholarship Fund; however, the initial license fee will [~~shall~~] be prorated for those months during which the license is valid.

(b) The legislature has directed the board to collect from each licensee who is neither retired nor disabled a professional fee of $200.00 per year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §521.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.4 concerning Registration Fee for Foreign Accountants.

The amendment to §521.4 will replace the word "shall" with the word "will".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it will not impose any additional responsibilities or costs on small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.4. Registration Fee for Foreign Accountants.

(a) The processing fee for the registration of a certified public accountant of another state or territory or the holder of a certificate, license, or degree issued by a foreign country will [~~shall~~] be $250.

(b) If the application is not approved, $150 of the processing fee will be refunded to the applicant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200802739
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §521.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.6 concerning Duplication and Other Charges and Refund of Board Fees.

The amendment to §521.6 will replace the phrase "the person" with the word "anyone"; delete the phrase "to eligible persons"; replace the phrase "to any person" with the word "for"; and replace the phrase "General Services Commission" with the phrase "Texas Facilities Commission" in subsection (a) and in subsections (a), (c) and (d) replace the word "shall" with the word "will".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of

adoption of the proposed amendment will be a clearer rule using terminology that is consistent with other board rules and Texas law.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule places no additional responsibilities or costs on small business; it merely changed some terminology for consistency.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.6. Duplication and Other Charges and Refund of Board Fees.

(a) Any costs incurred by the board upon application for or demand of any document, record, or action of the board which the board is required to provide by law or by these rules shall be borne by anyone [~~the person~~] making the request or demand. Such document, record, or action will [~~shall~~] be furnished [~~to eligible persons~~] upon payment of the established fee. Any matter deemed confidential by statute, attorney general opinion, or court order is not subject to release. The charge for [~~to any person~~] requesting photocopied reproductions of any public record of the board will be the charges established by the Texas Facilities Commission [~~General Services Commission~~]. The following guidelines will apply for the cost of providing mailing lists.

(1) Personnel charges will be the actual salary rate of attributable staff plus fringe benefits.

(2) Overhead charges will be determined on an actual cost recovery basis.

(b) The board may waive these charges if there is a public benefit. The executive director is authorized to determine whether a public benefit exists on a case by case basis.

(c) Sales tax, if required, will [~~shall~~] be charged on publications including, but not limited to, publications containing information on the Uniform CPA Examination and requirements for certification and licensure.

(d) Payment will [~~shall~~] be made by cash, check, or money order. No refund of any charges or fees paid to the board will be made for less than $5.00 of monies paid by mistake in excess of the correct fee, unless specifically requested in writing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200802740
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §521.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.7, concerning Fee for Transfer of Credits.

The amendment to §521.7 will replace the word "shall" with the word "will" in subsections (a) and (b).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it imposes no additional responsibilities or costs on small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because

the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.7. Fee for Transfer of Credits.

(a) The processing fee for the transfer of credits earned in another licensing jurisdiction to this board will [~~shall~~] be $100. This is a non-refundable fee.

(b) The processing fee for credits earned in this state and transferred to another licensing jurisdiction will [~~shall~~] be $40.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802741
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §521.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.8, concerning Retired or Disabled Status.

The amendment to §521.8 will replace the word "shall" with the word "will".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it does not impose any additional responsibilities or costs on small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.8. Retired or Disabled Status.

The annual license fee for an individual in retired or disabled status will [~~shall~~] be $10.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §521.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.9, concerning Certification Fee.

The amendment to §521.9 will replace the word "shall" with the word "will".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it imposes no additional responsibilities or costs on small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.9. Certification Fee.

The fee for the initial issuance of a CPA certificate pursuant to the Act will [~~shall~~] be $50.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §521.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.11, concerning Fee for a Replacement Certificate.

The amendment to §521.11 will replace the word "shall" with the word "will".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it imposes no new responsibilities or costs on small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because

the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.11. Fee for a Replacement Certificate.

The fee for the replacement of a certificate will [~~shall~~] not exceed $50.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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22 TAC §521.12

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.12, concerning Filing Fee.

The amendment to §521.12 will replace the word "shall" with the word "will".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it imposes no new responsibilities or costs on small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.12. Filing Fee.

The filing fee for the initial filing of the application of Intent to take the Uniform CPA Examination will [~~shall~~] be $50. This is a non-refundable fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802745

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §521.13

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.13, concerning Firm License Fees.

The amendment to §521.13 will replace the word "shall" with the word "will" in subsections (a), (b), (e) and (f).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it imposes no new responsibilities or costs on small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.13. Firm License Fees.

(a) The fee for a firm license will [~~shall~~] be $50 for each office of the firm in Texas plus the fee required by subsection (b) of this section, if any.

(b) A firm will [~~shall~~] pay an additional fee based on the number of CPAs employed at the firm in Texas plus the number of non-CPA owners of the firm in Texas, in accordance with the following chart: Figre: 22 TAC §521.13(b) (No change.)

(c) A firm "employs" a CPA within the meaning of this rule when:

(1) a CPA is a partner, owner, member, shareholder, or employee of the firm;

(2) a CPA works at the firm, either temporarily or long term, under a lease agreement or contract with any other entity, including but not limited to personnel staffing agencies or service companies affiliated with the firm;

(3) a CPA works at the firm on anything less than a full time basis;

(4) a CPA has any of the relationships described in paragraphs (1) - (3) of this subsection with an entity that is a partner, owner, member, or shareholder of the firm; or

(5) a CPA has any of the relationships described in paragraphs (1) - (3) of this subsection with an entity affiliated with the firm and that CPA participates in performing professional services for clients of the firm.

(d) Each firm shall certify to the board the highest number of CPAs it employs within the meaning of this rule during the 30 days prior to filing its application. Each CPA should be counted only once, even if he or she has more than one relationship as described in paragraphs (1) - (5) of subsection (c).

(e) If a firm is required to be licensed in Texas but has no office in Texas, the fee will [~~shall~~] be $50 plus the fee required by subsection (b) of this section, if any.

(f) Firm license will [~~shall~~] not be prorated or refunded.

(g) A firm whose license has been expired for 90 days or less may renew the license by paying the board a penalty of $150.00 in addition to the license fee required to be paid under subsections (a), (b) and (c) of this section.

(h) A firm whose license has been expired for more than 90 days may renew the license by paying the board a penalty of $250.00 in addition to the license fee required to be paid under subsections (a), (b) and (c) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802746

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 305-7848

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22 TAC §521.14

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.14 concerning Eligibility Fee.

The amendment to §521.14 in subsection (a) will replace the phrase "Upon implementation of the computer based" with the phrase "The board shall determine the"; delete the word "an"; and add the phrase ", not to exceed $100 per section, that"; in subsection (a)(1), (2), (3) and (4), delete the figure "$35.00".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it imposes no new responsibilities or costs on small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.14. Eligibility Fee.

(a) The board shall determine the [~~Upon implementation of the computer-based~~] CPA examination [~~an~~] eligibility fee, not to exceed $100 per section, that shall become effective for each section for which an applicant is eligible and applies.

(1) Auditing and Attestation[~~--$35.00.~~]

(2) Financial Accounting and Reporting[~~--$35.00.~~]

(3) Regulation[~~--$35.00.~~]

(4) Business Environment and Concepts[~~--$35.00.~~]

(b) The eligibility fee shall be paid to the Texas State Board of Public Accountancy. This is a non-refundable fee.

(c) The eligibility fee may be paid electronically through the State of Texas online e-pay system and applicable processing fees for the use of this service will be added to the total fee paid.

(d) Upon receipt by the board of an incomplete application, an applicant has 180 days to complete the application. If the application is not completed within that time, the application is terminated, the eligibility fee is forfeited and the applicant must file a new application and pay a new eligibility fee to continue with the examination process.

(e) The fee paid shall be valid for 90 days after the board determines that an applicant is eligible for a section of the CPA examination. The board may extend the 90-day eligibility to accommodate the psychometric evaluation and performance of test questions by the test provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802747
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.132

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.132, concerning Board Contracted Ethics Instructors after January 1, 2005.

The amendment to §523.132 will delete "after January 1, 2005" from the description of the rule; add the text "The" to the beginning of subsection (a); delete the following text "Effective January 1, 2005, the" and the following text "after January 1, 2005". In subsection (a)(1) after the text "Texas" insert the following text "or that the instructor is team teaching with a certified public accountant licensed in Texas". Delete the following text "within the last three years or". In subsection (b)(1) delete the following text "or by June 30, 2005, whichever is later,". In subsection (b)(5) delete the text "Public Accountancy". Add new subsection (d) with the following text "An instructor must submit a current resume with the contract." and renumber subsection (d) with (e).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the requirements for ethics course instructors.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on July 7, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.132. Board Contracted Ethics Instructors [~~after January 1, 2005~~].

(a) The [~~Effective January 1, 2005, the~~] board may contract with any instructor wishing to offer an ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content [~~after January 1, 2005~~]) who can demonstrate that:

(1) the instructor is a certified public accountant licensed in Texas or that the instructor is team teaching with a certified public accountant licensed in Texas and has completed the board's ethics training program [~~within the last three years or~~] as required by the board;

(2) the instructor has never been disciplined for a violation of the board's Rules of Professional Conduct; and

(3) the instructor is qualified to teach ethical reasoning because he has:

(A) experience in the study and teaching of ethical reasoning; and

(B) formal training in organizational or ethical behavior instruction.

(b) An instructor demonstrates that he is qualified to teach ethical reasoning upon proof that he has:

(1) at the time of application [~~or by June 30, 2005, whichever is later,~~] obtained education in ethics substantially equivalent to a minimum of 6 hours of credit from an accredited University, College or Community College, of which at least three hours must be in organizational ethics;

(2) teaching experience that is substantially equivalent to two or more full time semesters teaching experience at an accredited University, College or Community College;

(3) spent at least ten years performing accountancy related activities as a licensed CPA;

(4) no record of discipline for violation of the rules of professional conduct of the American Institute of Certified Public Accountants, the Texas Society of Certified Public Accountants or other national or state accountancy organization recognized by the board; and

(5) goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the [~~Public Accountancy~~] Act.

(c) The board may refuse to contract, refuse to renew a contract or cancel the contract of any instructor who has engaged in conduct rendering that instructor unsuitable for teaching ethics.

(d) An instructor must submit a current resume with the contract.

(e) [~~(d)~~] Interpretive comments: To have goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Public Accountancy Act an instructor must refrain from using the instruction of an ethics course as a marketing tool for other products and services offered by the instructor. An instructor must be free from conflicts of interest with the board in both fact and appearance. Representation of a respondent or a complainant in a disciplinary proceeding pending before the board creates the appearance of a conflict of interest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802725
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE
SUBCHAPTER X. FINANCIAL ASSURANCE REQUIREMENTS FOR BRINE EVAPORATION PITS

30 TAC §§37.9245, 37.9250, 37.9255, 37.9260, 37.9265

The Texas Commission on Environmental Quality (commission) proposes new §§37.9245, 37.9250, 37.9255, 37.9260, and 37.9265.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 1037, 80th Legislature, 2007, amended Subchapter D, Chapter 26 of the Texas Water Code (TWC), by adding §26.132. SB 1037 requires the commission to develop standards to prevent the contamination of ground and surface water resources from brine evaporation pit operations. SB 1037 requires an owner or operator to provide financial assurance to ensure satisfactory facility closure and obtain pollution liability insurance covering bodily injury and property damage to third parties.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes the addition of proposed new 30 TAC Chapter 218, Brine Evaporation Pits.

SECTION BY SECTION DISCUSSION

The commission proposes new Chapter 37, Subchapter X, Financial Assurance Requirements for Brine Evaporation Pits, to describe the financial assurance requirements for brine evaporation pits required by §218.35, Financial Assurance. Proposed new §37.9245, Applicability, indicates who is subject to the financial assurance requirements of the new subchapter.

Proposed new §37.9250, Definitions, references Subchapter A of Chapter 37 as well as Chapter 218. Since mechanism wordings all refer to the term "facility" rather than "brine evaporation pits" as used in Chapter 218, this section clarifies that the two terms shall be synonymous for financial assurance purposes. This is not meant to affect or change usage of the term "brine evaporation pits" in Chapter 218.

Proposed new §37.9255, Submission of Documents, requires that financial assurance mechanisms be submitted prior to permit issuance for new facilities or within 180 days of the effective date of the rules for existing facilities. For either case, the executive director may provide written permission for an alternate deadline at his discretion.

Proposed new §37.9260, Financial Assurance Requirements for Closure and Post Closure of Brine Evaporation Pits, subsection (a) specifies the requirements and associated framework for the financial assurance mechanisms for closure and post closure. Since these requirements are common to many of the financial assurance programs, cross reference is made to existing Subchapters A - D. The section also specifies that §37.31 does not apply to brine evaporation pit owners and operators since some brine evaporation pits are already in existence and could not comply with a requirement to provide a mechanism 60 days prior to receipt of waste. Section 37.9255 provides the submittal timing requirements for brine evaporation pits. Proposed new §37.9255(b) establishes the financial assurance mechanisms that will be allowed by cross referencing to existing Subchapter C. Pay in trusts are not proposed as an acceptable financial assurance mechanism since payment into a trust over time would not assure that financial assurance is adequate to ensure satisfactory closure of the brine evaporation pit as required by SB 1037. Only after the trust was fully funded could closure be assured by adequate funding.

Proposed new §37.9265, Third Party Pollution Liability Requirements for Brine Evaporation Pits, addresses the requirements for third party pollution liability insurance coverage. Subsection (a) describes the minimum required amount of insurance coverage, the minimum standards for an insurance company providing the coverage and establishes what constitutes proof of coverage. Subsection (b) requires that if an endorsement rather than a certificate of insurance is chosen to provide the proof, then the insurance policy must be amended by the Endorsement of Liability. Finally, subsection (c) makes certain definitions in §37.402 regarding the terms of liability insurance applicable to brine evaporation pit owners providing third party pollution liability insurance. Section 37.411 provides that the executive director may amend the amount of third party pollution liability insurance based on the risk associated with each individual brine evaporation pit.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules implement the provisions of SB 1037, 80th Legislature, Regular Session. SB 1037 requires the agency to develop standards and rules to prevent the contamination of ground and surface water resources from brine evaporation pit

operations. The agency is proposing new Chapter 218 that includes criteria for the design, construction, location, operation, maintenance, closure, and post closure of brine evaporation pits. In addition, the proposed Chapter 218 rules address concerns regarding storm water controls, require owners or operators to obtain financial assurance to ensure satisfactory pit closure and post closure, and require owners or operators to obtain insurance to cover bodily injury and property damage to third parties. The fiscal implications of proposed new Chapter 218 are contained in a separate fiscal note. The proposed rules for Chapter 37, Subchapter X specify the different options available to an owner or operator of a brine evaporation pit in obtaining financial assurance. These proposed rules are administrative in nature and are not expected to have a fiscal impact on a local government or other regulated entities.

The agency does not know of any local governments or businesses that are currently operating such pits, although one small business has had activity in the past. The agency does not expect any local governments or businesses to operate such pits in the future.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater flexibility in obtaining financial assurance for regulated entities that may choose to operate brine evaporation pits. Flexibility in obtaining financial assurance will encourage future owners of these pits to ensure adequate financial resources are in place to cover clean up costs should that activity be needed in the future.

The agency does not know of any businesses or individuals that are currently operating brine evaporation pits. The proposed rules are administrative in nature and offer options of what types of financial assurance may be obtained. The proposed rules have no fiscal implications for businesses or individuals.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that own or operate a brine evaporation pit as a result of the proposed rules which are administrative in nature and provide options regarding the types of financial assurance that can be obtained in complying with rules regarding brine evaporation pits in Chapter 218. These proposed rules in Chapter 37 have no fiscal implications for small or micro-businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that the proposed rules have no fiscal implications for small or micro-businesses. The commission is required to consider alternative regulatory methods only if the proposed rules would adversely affect small or micro-businesses and alternative methods would be consistent with the health, safety, and environmental, and economic welfare of the state. The commission has developed these proposed rules in accordance with a legislative mandate and they have no adverse affect on small or micro-businesses. Consequently, no alternative methods have been considered.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the statute.

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are part of a larger proposal to implement rules for the regulation of brine evaporation pits. The corresponding rulemaking is published in this issue of the *Texas Register,* proposed Chapter 218, Brine Evaporation Pits. The specific intent of the proposed rules in Chapter 37 is to prescribe the manner in which an owner or operator of a brine evaporation pit may meet the third party liability pollution insurance and financial assurance requirements under proposed Chapter 218. Furthermore, the proposed rules are administrative in nature and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the proposed rulemaking does not meet the definition of a major environmental rule.

In addition to the fact that the proposed rulemaking does not meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Subsection (a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) was adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards governing the operation of commercial brine evaporation pits. Second, the proposed rulemaking is required by SB 1037 and does not exceed its requirements. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking will be adopted under the express authority of SB 1037, that expressly requires the commission to adopt any rules required to implement the act. Therefore, the rules are not adopted solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the proposed rulemaking does not constitute a taking. The specific purpose of the proposed new rules is to prescribe the manner in which an owner or operator of a brine evaporation pit may meet the third party liability pollution insurance and financial assurance requirements under proposed Chapter 218. The proposed new rules substantially advance this stated purpose by delineating the insurance company rating, amount of coverage, and documentation required for acceptable third party pollution liability insurance and setting forth various options for obtaining adequate financial assurance.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). SB 1037 mandates that the commission adopt rules implementing the act.

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed amendments is to prescribe the manner in which an owner or operator of a brine evaporation pit may meet the third party liability pollution insurance and financial assurance requirements under proposed Chapter 218. The proposed rules substantially advance this stated purpose by delineating the insurance company rating, amount of coverage, and documentation required for acceptable third party pollution liability insurance and setting forth various options for obtaining adequate financial assurance.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden, nor restrict or limit the owner's right to real property in addition to reducing its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules are administrative in nature, and will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 24, 2008 at 10:00 a.m. in Room 201 of Building B, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-034-218-PR. The comment period closes on July 6, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Mr. David W. Galindo, Wastewater Permitting Section at (512) 239-0951.

STATUTORY AUTHORITY

The new rules are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC; TWC, §26.011, which authorizes the commission to adopt any rules necessary to protect the quality of water in the state; and TWC, §26.132 as amended by the 80th Legislature, which grants the commission the rulemaking authority to adopt rules requiring the owner or operator of a brine evaporation pit to provide the commission with proof of adequate financial assurance to ensure satisfactory closure of the facility and obtain pollution liability insurance covering bodily injury and property damage to third parties.

The new rules implement TWC, §§5.013, 5.102, 5.103, 5.105, 26.011, and 26.132.

§37.9245. Applicability.

This subchapter applies to owners and operators of brine evaporation pits required to provide evidence of financial assurance under Chapter 218 of this title (relating to Brine Evaporation Pits). This subchapter does not apply to state or federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States. This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure and third party pollution liability.

§37.9250. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements) and Chapter 218 of this title (relating to Brine Evaporation Pits), except the term "brine evaporation pit" shall mean the same as "facility" for purposes of this subchapter.

§37.9255. Submission of Documents.

An owner or operator required by this subchapter to provide financial assurance must submit an originally signed financial assurance mechanism for closure, post closure and third party pollution liability coverage.

(1) For new facilities, owners or operators shall submit the originally signed financial assurance mechanism:

(A) prior to permit issuance; or

(B) as otherwise approved in writing by the executive director.

(2) For facilities in existence upon the effective date of this section, owners or operators shall submit the originally signed financial assurance mechanism:

(A) within 180 days of the effective date of this section; or

(B) as otherwise approved in writing by the executive director.

§37.9260. Financial Assurance Requirements for Closure and Post Closure of Brine Evaporation Pits.

(a) An owner or operator of a brine evaporation pit subject to this subchapter shall establish financial assurance for the closure and post closure of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A - D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action) except §37.31 of this title (relating to Submission of Documents) is not applicable.

(b) An owner or operator subject to this subchapter may use any of the financial assurance mechanisms as specified in Subchapter C of this chapter to demonstrate financial assurance for closure except a pay-in trust fund may not be used.

§37.9265. Third Party Pollution Liability Requirements for Brine Evaporation Pits.

(a) An owner or operator subject to this subchapter shall establish and maintain financial assurance for third party pollution liability insurance covering bodily injury and property damage to third parties caused by accidental sudden or nonsudden occurrences arising from facility operations that:

(1) is issued by an insurance company authorized to do business in the state of Texas that has a rating by the A.M. Best Company of "A-" or better;

(2) is in an amount not less than $3 million; and

(3) is evidenced by either an originally signed certificate of insurance worded identically to the wording specified in §37.631 of this title (relating to Certificate of Insurance for Liability) or an endorsement worded identically to the wording specified in §37.641 of this title (relating to Endorsement for Liability).

(b) If an endorsement as described within this section is used, the insurance policy shall be amended by the Endorsement for Liability.

(c) Owners and operators must also comply with §37.402 of this title (relating to Definitions), §37.404 of this title (relating to Liability Requirements for Sudden and Nonsudden Accidental Occurrences) and §37.411 (relating to Adjustments to the Level of Liability Coverage).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802712

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 239-0177

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CHAPTER 218. BRINE EVAPORATION PITS

30 TAC §§218.1, 218.5, 218.10, 218.15, 218.20, 218.25, 218.30, 218.35, 218.40

The Texas Commission on Environmental Quality (commission) proposes new §§218.1, 218.5, 218.10, 218.15, 218.20, 218.25, 218.30, 218.35, and 218.40.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 1037, 80th Legislature, 2007, amended Subchapter D, Chapter 26 of the Texas Water Code (TWC), by adding §26.132. SB 1037 requires the commission to develop standards to prevent the contamination of ground and surface water resources from brine evaporation pit operations. The proposed rule requires an owner or operator of an existing or new brine evaporation pit to obtain a permit to operate the facility. The rulemaking includes specific criteria for the design and construction of the brine evaporation pit and requires that the rules establish location, operation, and maintenance criteria. Further, the rulemaking includes requirements for the owner or operator to provide financial assurance to ensure satisfactory facility closure and obtain pollution liability insurance covering bodily injury and property damage to third parties. The rulemaking imposes fees necessary to recover the cost of administration and enforcement of the regulations.

The proposed rulemaking is applicable to the process of evaporating groundwater within a surface impoundment or pit to produce concentrated brine water or residual salts, minerals, and other naturally occurring substances present within groundwater. Potential final products from the use of a brine evaporation pit include concentrated magnesium chloride brine, sodium chloride brine, potassium chloride and various other naturally occurring minerals within groundwater. Consequently, there are a multitude of commercial and industrial uses for these products such as ice-melting compounds for roads, agricultural fertilizer, and chemical manufacturing.

Although the commission regulates the disposal of certain wastes via evaporation within surface impoundments, the commission's current regulations do not address the commercial production of a product by evaporation within a surface impoundment. This production activity is not associated with oil and gas production and therefore is not regulated under the authority of the Texas Railroad Commission (RRC). An unregulated brine evaporation pit operation has the potential to cause significant impacts to water quality due to the high chloride content of the brine and mineral products. The proposed rule implements SB 1037 by establishing the safeguards necessary to protect ground and surface water resources.

A corresponding rulemaking is published in this issue of the *Texas Register* that includes the addition of proposed new Subchapter X, Financial Assurance for Brine Evaporation Pits to 30 TAC Chapter 37, Financial Assurance.

SECTION BY SECTION DISCUSSION

Proposed new §218.1, Definitions, defines the terms used within the subchapter. Definitions for the following terms are consistent with definitions found in SB 1037: "licensed engineer" and "evaporation pit." Although the definition of an evaporation pit is consistent with the definition found in SB 1037, the term "evaporation pit" has been modified to "brine evaporation pit" to clarify the applicability of SB 1037 to a surface impoundment used for the production of brine and minerals by evaporation. The definition also shows that the rule is not applicable to a surface impoundment used for the disposal of certain wastes by evaporation which are currently regulated by existing commission rules.

The following definitions were added to those contained in SB 1037: brine product, facility, incidental storm water, owner, and operator. The definition of "brine product" in proposed new §218.1(2) is based upon language provided by the SB 1037. Proposed new §218.1(3) defines "facility" to encompass all components of the brine production evaporation operations that will be required to be addressed within the facility closure plan. Proposed new §218.1(4) defines "incidental storm water" to clarify the intent of the SB 1037 to prohibit storm water runoff from the site from entering the evaporation pit and causing an unauthorized discharge. Rainfall falling directly into the pit and collected storm water runoff from brine production areas are authorized for placement within the pit. Proposed new §218.1(6) and (7) define operator and owner, respectively. The definitions are modified from the definitions included in 30 TAC §305.2 to clarify responsibility consistent with the scope of SB 1037.

Proposed new §218.5, Purpose, identifies the intent of the rule by reiterating the objectives of the SB 1037 to: prohibit the occurrence of a discharge from a brine evaporation pit into or adjacent to water in the state; establishing specific location, operation and design criteria to prevent contamination of surface and groundwater resources during normal operation and failure; require financial assurance to ensure proper closure and post closure care of the facility; and require evidence of pollution liability insurance coverage of bodily injury and property damage to third parties.

Proposed new §218.10, Applicability, clarifies which type of operation will be subject to the proposed rule. The determination is based primarily upon the definition of an evaporation pit as provided by SB 1037. The definition specifies that the rule governs the commercial production of brine, salts, minerals and naturally occurring substances. The term "commercial" is consistent with SB 1037's explicit exclusion of brine operations associated with oil and gas production. Brine produced during oil and gas exploration is process waste and not a commercial final product. Further, activities associated with oil and gas production are regulated under the authority of the RRC in accordance with memorandum of understanding (MOU) between the RRC and the commission. The proposed rule is consistent with the MOU. Further, the definition of an evaporation pit provided by SB 1037 identifies groundwater and incidental storm water as the applicable source waters for evaporation. Therefore, the rule is not applicable to the evaporation of source waters other than groundwater, such as seawater. SB 1037 also requires the rule be applicable to both existing and new brine evaporation pits, regardless of the date the operation began.

Proposed new §218.15, Authorization, requires an owner or operator of a brine evaporation pit to apply for and obtain a permit from the commission. The commission is proposing authorization of brine evaporation pits under individual wastewater permits issued in accordance with the commission's existing permit application and processing regulations. Under the individual wastewater permit application process, the applicant will be subject to public notice requirements. This process provides the public with the opportunity to comment and request a contested case hearing on a permit application. Individual wastewater permits issued in accordance with the rule will prohibit discharge from a brine evaporation pit into or adjacent to water in the state. An owner or operator of a new brine evaporation pit operation subject to the rule must obtain coverage under an individual wastewater permit prior to construction of the facility. An owner or operator of an existing brine evaporation pit operation must submit an application for an individual wastewater permit within 180 days of the effective date of the rule.

Proposed new §218.20, Surface and Groundwater Protection, includes specific criteria for the location, design, construction, capacity, operation, and maintenance of the brine evaporation pit.

SB 1037 requires the rule govern the location of a brine evaporation pit so that a failure of the pit or unauthorized discharge from the pit would not result in an adverse impact on water in the state. Therefore, the rule includes distance requirements from public and private drinking water wells and more stringent storm water controls for any facility located within the 100-year flood plain. More stringent storm water control criteria are warranted within the 100-year flood plain to prevent storm water from entering and causing an unauthorized discharge from a brine evaporation pit.

SB 1037 requires that the liner meet standards at least as stringent as the commission's existing regulations for a Type I landfill managing Class 1 industrial solid waste. Therefore, the rule includes identical composite liner system criteria as required within the landfill regulations at 30 TAC Chapter 330. The liner must consist of an upper geomembrane liner and lower compacted soil liner. The evaporation pit liner must be designed and certified by a licensed engineer. The rule also includes the option for approval of an alternative liner.

The rule includes operational requirements to prevent the discharge of contaminated storm water from the facility. Product handling areas shall be adequately curbed and sloped to allow for containment of runoff within a storm water retention pond and recycled to the brine evaporation pit. Storm water retention pond liner criteria are included to prevent groundwater pollution and the migration of wastewater offsite. The owner or operator shall maintain a two-foot freeboard within the evaporation pit at all times.

The rule requires that the owner or operator shall ensure that the facility is properly maintained. The owner or operator shall keep records of examination of liners and storm water controls onsite for a period of at least five years. A licensed engineer shall review the records and conduct a site evaluation on a five-year basis or following a permit amendment due to a significant change in the facility or process.

Proposed new §218.25, Closure and Post Closure Care, delineates the requirements for closure and post closure care of the facility. Although SB 1037 requires closure and the demonstration of financial assurance for closure it does not explicitly require post closure care. However, the intent of SB 1037 is to prevent impacts to groundwater and surface water both during and following closure. Therefore, the rule includes two procedures for closure. Proposed new §218.25(a)(1) requires removal and offsite disposal of all waste and contaminated media. Following re-

moval and decontamination of all wastes, the site must be certified as closed by a licensed engineer in accordance with the approved closure plan.

Proposed new §218.25(a)(2) requires all waste and contaminated media to be enclosed within the lined brine evaporation pit. The rule includes criteria for the design and construction of the cover. Post closure requirements are applicable under proposed new §218.25(b) when waste or contaminated media are left in place at closure. Post closure care requires long term maintenance of the cover. Additional requirements such as groundwater monitoring may be included if determined to be necessary by the executive director.

Proposed new §218.30, Cost Estimate for Closure and Post Closure, requires the owner or operator to estimate closure costs based upon the requirements within §218.25(b) procedure for closure and post closure requirements. This is consistent with the commission's current cost estimate procedures for hazardous waste surface impoundments.

Proposed new §218.35, Financial Assurance, requires an owner or operator to provide proof of financial assurance to ensure proper closure and post closure care of the facility and third party liability insurance coverage of third parties in accordance with SB 1037. The rule requires the owner or operator to submit a cost estimate based upon a closure and post closure plan for approval by the executive director prior to permit issuance.

Proposed new §218.40, Fees, requires that the owner or operator shall comply with the applicable fee requirements established for individual wastewater permits within 30 TAC Chapter 21. This meets the statutory requirement that the commission impose fees necessary to recover the costs of administering and enforcing the rule.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules implement the provisions of SB 1037, 80th Legislature, Regular Session. SB 1037 requires the agency to develop standards and rules to prevent the contamination of ground and surface water resources from brine evaporation pit operations. Agency rules must include criteria for the design, construction, location, operation, maintenance, and closure of brine evaporation pits. In addition, agency rules must address concerns regarding storm water controls, require owners or operators to obtain financial assurance to ensure satisfactory pit closure, and require owners or operators to obtain insurance to cover bodily injury and property damage to third parties. The agency must also permit the operation of brine evaporation pits and must impose the necessary fee to recover the cost of administering and enforcing the proposed rules.

The agency does not expect to collect additional revenue from permitting brine evaporation pits in the near future. The agency does not know of any local governments or businesses that are currently operating such pits, although one small business has had activity in the past. If a local government or business decides to operate a brine evaporation pit in the future, the agency would collect revenue for a one time permit application fee, estimated to be $350 and an annual water quality fee of $800. These revenues would be deposited into the Water Resource Management Account Number 153.

No local governments are known to operate brine evaporation pits, and the agency does not expect local governments to operate such pits in the future. Therefore, the proposed rules are not expected to have a fiscal impact on local governments.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater protection of surface and groundwater from any future brine evaporation pit operations.

The agency does not know of any businesses or individuals that are currently operating brine evaporation pits. However, one small business has conducted these types of operations in the past, and the expected fiscal implications for small business can be found in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT of this fiscal note. Any large business is expected to incur the same costs as would a small business if it decides to operate a brine evaporation pit.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses that own or operate a brine evaporation pit. One small business has operated such a pit in the past but is not currently in operation. Small or micro-businesses will be required to incur costs to operate brine evaporation pits in the future. Costs to prepare a permit application package are estimated to be $7,000, and a one time permit application fee is estimated to cost $350. The proposed rules will also require owners or operators to pay an annual water quality fee of $800. Financial assurance costs to ensure closure and post closure care can be as much as $240,000 per year for the active life of the facility plus 30 years for closure, and pollution liability insurance is estimated to cost $20,000 per year.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that the proposed rules will increase operations and compliance costs for small or micro-businesses that own or operate brine evaporation pits. The commission is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety, and environmental, and economic welfare of the state. The commission has developed these proposed rules in accordance with a legislative mandate. Consequently, any variance from the legislative mandate would not be consistent with the health, safety, and environmental and economic welfare of the state and no alternative regulatory methods have been considered.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not

subject to Texas Government Code, §2001.0225 because, although it does meet the definition of "major environmental rule" as defined in Texas Government Code, §2001.0225 and may adversely affect a sector of the economy, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rulemaking is to protect ground and surface water from the risk of contamination posed by the improper operation of commercial evaporation pits. Also, as noted in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT and SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS sections of the FISCAL NOTE, this rulemaking will increase operations and compliance costs for small or micro-businesses that own or operate brine evaporation pits. The FISCAL NOTE found only one business that would be affected by this rule. The commission concludes that the proposed rulemaking meets the definition of a major environmental rule.

Although the proposed rulemaking meets the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This section applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) was adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards governing the operation of commercial brine evaporation pits. Second, the proposed rulemaking is required by SB 1037 and does not exceed its requirements. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking will be adopted under the express authority of SB 1037, that expressly requires the commission to adopt any rules required to implement the act. Therefore, the rules are not adopted solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the proposed rulemaking does not constitute a taking. The specific purpose of the proposed rulemaking is to protect ground and surface water from the risk of contamination posed by the improper operation of brine evaporation pits. This rulemaking substantially advances this stated purpose by requiring an owner or operator of an existing or new brine evaporation pit to obtain a permit to operate the facility, provide financial assurance to ensure the satisfactory closure of the facility, obtain pollution liability insurance covering bodily injury and property damage to third parties, and comply with specific design, construction, location, operation, maintenance, and closure requirements.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). SB 1037 mandates that the commission adopt rules implementing the act.

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to protect ground and surface water from the risk of contamination posed by the improper operation of brine evaporation pits. This rulemaking substantially advances this stated purpose by requiring an owner or operator of an existing or new brine evaporation pit to obtain a permit to operate the facility, provide financial assurance to ensure the satisfactory closure of the facility, obtain pollution liability insurance covering bodily injury and property damage to third parties, and comply with specific design, construction, location, operation, maintenance, and closure requirements.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden, nor restrict or limit the owner's right to real property in addition to reducing its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Requiring an owner or operator of a brine evaporation pit to obtain a permit, provide financial assurance, obtain pollution liability insurance, and comply with specific design, construction, location, operation, maintenance, and closure requirements will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 24, 2008 at 10:00 a.m. in Room 201 of Building B, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should con-

tact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-034-218-PR. The comment period closes on July 7, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Mr. David W. Galindo, Wastewater Permitting Section at (512) 239-0951.

STATUTORY AUTHORITY

The new rules are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under TWC; TWC, §26.011, which authorizes the commission to adopt any rules necessary to protect the quality of water in the state; TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.132 as amended by the 80th Legislature, which grants the commission the rulemaking authority to adopt rules to protect surface water and groundwater quality from the risks presented by commercial brine evaporation pits.

The new rules implement TWC, §§5.013, 5.102, 5.103, 5.105, 26.011, 26.027, and 26.132.

§218.1. Definitions.

The following words and terms, when used in the subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) Brine evaporation pit--A surface impoundment within which groundwater and incidental storm water, is or has been retained and evaporated, for the purpose of recovering brine product.

(2) Brine product--concentrated brine water and residual minerals, salts, or other naturally occurring substances produced by the evaporation of groundwater.

(3) Facility--the brine evaporation pit and composite liner system; storm water control and retention structures; and brine product handling areas.

(4) Incidental storm water--rainwater falling directly into a brine evaporation pit and/or collected storm water runoff from brine product handling areas.

(5) Licensed engineer--an engineer who holds a license issued under Texas Occupations Code, Title 6, Chapter 1001.

(6) Operator--Any person responsible for the physical operation and control of a brine evaporation pit.

(7) Owner--Any person having title, wholly or partly, of a brine evaporation pit.

§218.5. Purpose.

The purpose of this subchapter is to regulate brine evaporation pit operations to:

(1) prohibit discharge from the facility into or adjacent to water in the state;

(2) establish standards for design, construction, location, operation, and maintenance to prevent contamination of surface and groundwater resources;

(3) require financial assurance to ensure proper closure of the evaporation pit; and

(4) require that the owner or operator submit evidence to the Texas Commission on Environmental Quality of pollution liability insurance coverage of bodily injury and property damage to third parties.

§218.10. Applicability.

(a) This subchapter applies to a brine evaporation pit:

(1) operated for the commercial production of brine product by solar evaporation; and

(2) in operation on or after the effective date of this rule, regardless of the date the facility began operation.

(b) This subchapter does not apply to:

(1) operations associated with oil and gas production and regulated under the authority of the Texas Railroad Commission; in accordance with 16 TAC §3.30 (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality); or as is in 16 TAC §3.30; or

(2) the recovery of brine product via evaporation of water sources other than groundwater and incidental storm water.

§218.15. Authorization.

(a) An owner or operator must obtain an individual wastewater permit subject to the requirements of Chapter 305 of this title (relating to Consolidated Permits).

(1) For new facilities, the owner or operator shall obtain an issued individual wastewater permit prior to construction of the facility.

(2) For facilities in existence upon the effective date of this section, the owner or operator shall submit an application for an individual wastewater permit within 180 days of the effective date of this section.

(b) An application for an individual wastewater permit must be submitted on the forms provided by the executive director in accordance with §305.45(a)(8) of this title (relating to Contents of Application for Permit) and must include:

(1) a closure and post-closure plan developed in accordance with §218.25 of this title (relating to Closure and Post Closure Care); and

(2) a cost estimate developed in accordance with §218.30 of this title (relating to Cost Estimate for Closure and Post Closure Care).

(c) A new individual wastewater permit application or renewal, amendment, or modification of an existing permit is subject to the public notice requirements within Chapter 281 of this title (relating to Applications Processing).

§218.20. Surface and Groundwater Protection.

(a) Location. The owner or operator shall ensure that the facility is located so that a failure of the facility or unauthorized discharge

from the facility does not result in an adverse effect on water in the state.

(1) A brine evaporation pit may not be located in the 100-year flood plain, unless protected from inundation and damage that may occur during that flood event in accordance with subsection (b)(4)(A) of this section.

(2) The facility may not be located within:

(A) 500 feet of a public water well as provided by §290.41(c)(1)(B) of this title (relating to Water Sources); nor

(B) 250 feet of a private water well.

(b) Design and Construction. The owner or operator of a brine evaporation pit shall ensure the facility is designed and constructed to prevent an unauthorized discharge into or adjacent to water in the state. An owner or operator shall not place or allow the placement of groundwater into a brine evaporation pit if the facility does not comply with the provisions of this subsection.

(1) Brine Evaporation Pit Liner. The owner or operator shall ensure the brine evaporation pit is lined with a composite liner system in accordance with §330.331(e)(1) of this title (relating to Design Criteria) that meets at least the following minimum requirements.

(A) The upper component must consist of a geomembrane liner at least 30 mil thick, and must be at least 60 mil thick if constructed of high density polyethylene.

(B) The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component.

(C) The lower component must consist of at least a three-foot layer of re-compacted soil with a hydraulic conductivity of no more than 1 x 10-7 centimeters per second (cm/sec).

(D) The composite liner system shall be designed by a licensed engineer.

(E) The owner or operator shall furnish certification, signed, sealed, and dated by a licensed engineer that the completed liner meets the evaporation pit liner criteria described in this paragraph. Certification shall be submitted to the executive director at least 30 days prior to use.

(2) Alternative liner. The owner or operator may apply for approval of an alternative brine evaporation pit liner. An alternative liner design may be authorized by the executive director if the owner or operator demonstrates the proposed alternate liner achieves an equivalent protective hydraulic conductivity which meets or exceeds the composite liner criteria. At the discretion of the executive director, a field demonstration may be required to prove the practicality and performance capabilities of an alternative liner design.

(3) Storm Water Retention Ponds.

(A) Storm water retention pond liners must consist of at least a three-foot layer of re-compacted soil with a hydraulic conductivity of no more than 1 x 10-7 cm/sec.

(B) Storm water retention ponds must be capable of containing the volume of storm water runoff from brine product handling areas generated from a 24-hour, 25-year storm.

(C) The owner or operator shall furnish certification, signed, sealed, and dated by a licensed engineer that the completed storm water retention pond liner meets the criteria described in this paragraph. Certification shall be submitted to the executive director at least 30 days prior to use.

(4) Storm Water Controls. Storm water control structures must be properly constructed and maintained to prevent storm water from entering the brine evaporation pit.

(A) A facility located in the 100-year flood plain must be equipped with storm water diversion structures at a minimum height equal to two feet above the 100-year flood water elevation around the evaporation pit.

(B) A facility located above the 100-year flood plain shall be equipped with storm water diversion structures that are, at a minimum, capable of diverting all rainfall from a 24-hour, 25-year storm.

(c) Operations and Maintenance.

(1) The owner or operator shall at all times ensure that the facility is properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of the brine evaporation pit liner, and storm water control and retention structures in order to prevent an unauthorized discharge.

(2) Storm water that comes into contact with any brine product storage pile must be collected in a retention pond and recycled to the evaporation pit.

(3) Loading and unloading of brine product must be conducted within an area which is adequately curbed and sloped to allow for containment of storm water runoff.

(4) Storm water runoff from brine product loading and unloading areas must be collected in a lined retention pond and recycled to the evaporation pit.

(5) The owner or operator shall have a licensed engineer review the documentation and evaluate the site at least once every five years or following a permit amendment resulting from a substantial change to the facility or operation.

(6) The brine evaporation pit must maintain a two-foot freeboard at all times.

(7) Operations and maintenance records must be retained at the facility site for a period of five years and be readily available for review by representatives of the executive director.

§218.25. Closure and Post Closure Care.

(a) At closure, the owner or operator must:

(1) remove or decontaminate all brine product waste and waste residues, contaminated design and operating system components such as liners, dikes, storm water retention structures, brine product handling areas, and contaminated media; or

(2) eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues; stabilize remaining wastes to a bearing capacity sufficient to support final cover; and cover the brine evaporation pit with a final cover designed and constructed to:

(A) provide long-term minimization of the migration of liquids through the closed impoundment;

(B) function with minimum maintenance;

(C) promote drainage and minimize erosion or abrasion of the final cover;

(D) accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) be constructed of at least a three-foot layer of recompacted soil with a hydraulic conductivity of no more than 1 x 10-7 centimeters per second (cm/sec).

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with the following post-closure requirements:

(1) maintain the integrity and effectiveness of the final cover including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events; and

(2) prevent run-on and run-off from eroding or otherwise damaging the final cover.

(c) Additional post closure requirements may be added by the executive director as determined to be necessary to protect human health and/or the environment; including but not limited to, groundwater monitoring.

(d) The closure plan for the brine evaporation pit must include both a plan for complying with subsection (a)(1) of this section and a contingent plan for complying with subsection (a)(2) of this section, in case not all contaminated subsoils can be practicably removed at closure; and the owner or operator must prepare a contingent post-closure plan for complying with subsection (b) of this section, in case not all contaminated subsoils can be practicably removed at closure.

(e) Written notification must be provided to the executive director at least 90 days prior to conducting any facility closure activity.

(f) Within ten days after completion of final closure activities of a facility, the owner or operator shall submit to the executive director by registered mail the following:

(1) a certification, signed by a licensed professional engineer, verifying that final facility closure has been completed in accordance with the approved closure plan. The submittal to the executive director shall include all applicable documentation necessary for certification of final facility closure; and

(2) for a facility that does not require post-closure care, a request for voluntary revocation of the permit.

§218.30. Cost Estimate for Closure and Post Closure Care.

(a) The owner or operator shall prepare a closure cost estimate based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither the parent nor a subsidiary of the owner or operator. Notwithstanding other closure costs, such estimate must also include the costs associated with third party removal, shipment off-site, and processing or disposal off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

(1) maximum inventory of wastes in storage and/or processing units, including, but not limited to, storage surface impoundments, waste piles, tanks, and containers;

(2) wastes generated as a result of closure activities (e.g. decontamination, removal of liquids from surface impoundments, or waste piles); and

(3) contaminated storm water.

(b) The cost estimates calculated for closure and post-closure care of a brine evaporation pit facility subject to this chapter must include the cost of complying with the contingent closure plan specified within §218.25(a)(2) of this title (relating to Closure and Post Closure Care) and the contingent post-closure plan specified within §218.25(b) of this title, but are not required to include the cost of expected closure under subsection §218.25(a)(1) of this title.

§218.35. Financial Assurance.

An owner or operator of a brine evaporation pit shall establish and maintain financial assurance for closure and third party pollution liability in accordance with Chapter 37, Subchapter X of this title (relating to Financial Assurance for Brine Evaporation Pits). The amount of financial assurance for closure must be no less than the amount determined by the executive director as sufficient to meet the requirements of the cost estimate calculated in accordance with §218.30(b) of this title (relating to Cost Estimate for Closure and Post Closure Care).

§218.40. Fees.

The owner or operator shall comply with the applicable fee requirements within Chapter 21 of this title (relating to Water Quality Fees).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802713
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 239-0177

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 29. BENEFITS

SUBCHAPTER D. PLAN LIMITATIONS

34 TAC §§29.50 - 29.52, 29.55

The Teacher Retirement System of Texas ("TRS") proposes amended rules regarding plan limitations based on the federal Internal Revenue Code, as well as federal regulations and guidance. Amendments are proposed to the following rules: §29.50, relating to definitions; §29.51, relating to plan limitations on retirement benefits; §29.52, relating to adjustment to annual benefit limit; and §29.55, relating to limitation on contributions.

With recent changes to federal laws and regulations governing qualified retirement plans, including the Pension Protection Act of 2006 and new regulations implementing Section 415 of the Internal Revenue Code of 1986, as amended, it is necessary to update the TRS plan rules governing limitations on annual benefits and contributions to reflect current federal requirements. The proposed amendments update the TRS plan rules to reflect current federal provisions and also to describe in more detail the standards and processes by which TRS applies the limitations to annual benefits and to contributions made for the purchase of special service credit.

The proposed amendments to §29.50 add a definition for the term "limitation year" to clarify that the TRS plan year of September 1 through August 31 also is the limitation year for the purpose of applying the annual limitations on benefits and contributions. The amendments also clarify the applicability of the annual benefit limits to benefits other than service retirement benefits, including disability retirement or pre-retirement member death bene-

fits, and modify definitions to more specifically reference applicable federal regulations.

The proposed amendments to §29.51 add the effective date of the federal limits on benefits and contributions and modify existing language to include a general reference to contribution limitations.

The proposed amendments to §29.52 add the effective date for the applicable federal limits on benefits, delete obsolete provisions no longer applicable under federal law, and add detailed provisions regarding how the benefit limitation, expressed as a straight life form of annuity (i.e., a standard annuity), is to be adjusted if the form of benefit payable to the TRS recipient is not a straight life annuity. The proposed amendments alternatively add detailed provisions regarding how the form of benefit payable, if not a straight life annuity (i.e., a standard annuity), is to be adjusted to an actuarially equivalent straight life annuity for the purpose of comparing the benefit payable to the federal limitation, which is expressed as a straight life annuity.

The proposed amendments to §29.55 expressly set forth the limitations on contributions and the authority of TRS to refuse to permit a service credit purchase if the amount of the contribution would exceed the applicable limit. The proposed amendments also set forth in detail the Internal Revenue Code provisions that permit certain service credit to be considered "permissive" service credit and thus subject to more favorable contribution limitations than service credit that is not "permissive" service credit. The amendments reflect the changes under the Pension Protection Act of 2006 to the definition of "permissive" service credit. Additionally, the amendments expressly provide that only service credit authorized to be purchased under the TRS retirement plan may be purchased; the standards for permissive service credit under federal tax law do not expand the types of service credit available for purchase under the TRS retirement plan.

Ken Welch, TRS Chief Financial Officer, estimates that, for each year of the first five years that the proposed rules will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended sections. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of federal tax code provisions applicable to qualified retirement plans.

For each year of the first five years that the proposed rules will be in effect, Ronnie Jung, TRS Executive Director, has determined that the public benefits expected as a result of the adoption of the proposed rules will be to describe in greater detail the standards for applying benefit and contribution limitations to TRS benefits and to payments for TRS service credit, respectively. For each year of the first five years that the proposed rules will be in effect, Mr. Welch has determined that any probable economic costs to entities or persons required to comply with the proposed rules is the result of federal tax code provisions applicable to qualified retirement plans. There will be no effect on local employment because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Any measurable impact on local employment is the result of the federal legislative enactment. Mr. Welch has also determined that the proposed amendments will have no adverse economic effect on small businesses or micro-businesses, and, therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: The amended rules are proposed under the following statutes: §823.006, Government Code, which authorizes the retirement system to limit the purchase of service credit to the extent required by applicable limits on the amount of annual contributions a participant may make to a qualified plan under Sections 401(a) and 415(c), Internal Revenue Code of 1986; §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system; and §825.506, Government Code, which authorizes the board of trustees to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by section 415 of the Internal Revenue Code of 1986.

Cross-Reference to Statute: The proposed amendments affect the following provisions of the Government Code: Chapter 823, relating to Creditable Service; Chapter 824, Benefits; §823.006 and §825.506, which authorize limitations on benefits and contributions in accordance with federal tax law; and §825.517, relating to Excess Benefit Arrangement.

§29.50. Definitions.

The following words and terms, when used in the sections under this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual additions--The sum of the following amounts credited to a member's account under any defined contribution plan (or a portion of a defined benefit plan treated as a defined contribution plan) maintained by the employer for the plan year:

(A) employer contributions;

(B) member contributions, including member contributions to a qualified defined benefit plan that have not been picked up under [~~Code~~] §414(h) of the Internal Revenue Code of 1986 but not including rollover contributions;

(C) forfeitures; and

(D) amounts allocated after March 31, 1984, to an individual medical benefit account, as defined in §415(1)(2) of the Internal Revenue Code, that is part of a pension or annuity plan maintained by the employer. Annual additions do not include amounts described in §415(1)(2) of that code [~~the Code~~] for the purpose of computing the percentage limitation described in §415(c)(1)(B) of that code [~~the Code~~]. For any plan year beginning before January 1, 1987, only that portion of the member contributions equal to the lesser of those member contributions in excess of 6.0% of annual compensation or one-half of the member's contributions to any qualified plan maintained by the employer is treated as annual additions.

(2) Annual benefit--A service retirement, disability retirement, or pre-retirement member death benefit calculated on the basis of service and average compensation under Tex. Gov't Code §824.203 or §824.204, whether paid to a retiree or to a beneficiary, and payable annually in the form of a straight life annuity (ignoring that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity, as defined in §417 of the Internal Revenue Code) with no ancillary or incidental benefits or rollover contributions and exclusive of any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under §417 of the Internal Revenue Code (but inclusive of any such contributions that are picked up by the employer pursuant

to §414(h)(2) of the Internal Revenue Code, or that otherwise are not treated as a separate defined contribution plan). If the benefit is payable in any other form, the determination as to whether the limitation described in §29.51 of this title (relating to Plan Limitations on Annual [Retirement] Benefits and Member Contributions) or §29.52 of this title (relating to Adjustment to Annual Benefit Limit) has been satisfied shall be made by adjusting such benefit so that it is actuarially equivalent to the annual benefit described in this section in accordance with the regulations issued by the U.S. secretary of the treasury.

(3) Annual compensation--All wages within the meaning of §3401(a) of the Internal Revenue Code relating to income tax withholding at source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the services performed and without regard to whether such wages are treated as compensation under any other provision of this chapter. For purposes of applying plan limitations, the definition of compensation where applicable will be compensation defined in Treasury Regulation §1.415(c)-2(d)(3), or successor regulations; provided, however, that the definition of compensation will exclude member contributions picked up under §414(h)(2) of the Internal Revenue Code, and for plan years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in §402(g)(3) of the Internal Revenue Code and any amounts contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of §125 or §457 of the Internal Revenue Code, and for plan years beginning on and after January 1, 2001, §132(f)(4) of that code. [~~Annual compensation shall include amounts deferred under §402(g)(3) of the Code and any amounts contributed or deferred by the employer at the election of the employee which is excluded from gross income under §§125, 132(f)(4), or 457 of the Code. Annual compensation shall not include amounts picked up under §414(h) of the Code.~~]

(4) Code--The Internal Revenue Code of 1986, as amended.

(5) Defined contribution plan--A plan described in §414(i) of the Internal Revenue Code and, solely for purposes of this subchapter, employee contributions to any other qualified plan maintained by the employer, other than any picked-up contributions.

(6) Employer--The agents, agencies or political subdivisions of the State responsible for education, including the governing board of any school district created under the laws of the State, any county school board, the board of trustees, the State Board of Education, the Texas Education Agency, the board of regents of any college or university, or any other legally constituted board or agency of any public school.

(7) Limitation year--The limitation year for purposes of §415 of the Internal Revenue Code beginning on September 1 of each year and ending on the following August 31.

(8) [~~(7)~~] Member contributions--Those contributions within the meaning of [~~the Code,~~] §411(c)(2)(C) of the Internal Revenue Code, but not any contributions picked up by the employer within the meaning of §414(h)(2) of that code [~~the Code~~].

(9) [~~(8)~~] Plan year--The plan's accounting year beginning on September 1 of each year and ending on the following August 31.

§29.51. Plan Limitations on Annual [~~Retirement~~] Benefits and Member Contributions.

(a) Effective as of July 1, 1989, and notwithstanding any other plan provision in statute or rule, member contributions paid to, and annual benefits paid from, TRS may not exceed the annual limits on contributions and benefits, respectively, allowed by §415 of the Internal Revenue Code. [~~Notwithstanding any other provisions of this chapter, the benefit provided with respect to any member for any plan year shall not exceed an annual benefit computed in accordance with the limitations prescribed by this section. Specifically, the maximum annual benefit payable in any plan year to a member may not exceed the applicable dollar amount established in Internal Revenue Code §415(b)(1)(A), as adjusted pursuant to Internal Revenue Code §415(d).~~]

(b) Benefits provided to a member under this plan and under any other defined benefit plan or plans maintained by the employer shall be aggregated for purposes of determining whether the limitations in subsection (a) of this section are met. If the aggregate benefits otherwise payable to any member from this plan and any other defined benefit plan or plans maintained by the employer would otherwise exceed the limitations of subsection (a) of this section, reductions in benefits are required to be made to the other plan to the extent necessary to enable each plan or plans to satisfy those limitations.

§29.52. Adjustment to Annual Benefit Limit.

(a) Before July 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount and salary limits specified in §415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On or after July 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in §415(b)(1)(A) of that code, subject to the applicable adjustments in §415(b) of that code. [~~The maximum benefit otherwise permitted under §29.51 of this title (relating to Plan Limitations on Retirement Benefits) is subject to the following adjustments.~~]

(1) If the annual benefit begins before the member attains age 62, the Internal Revenue Code §415(b)(1)(A) limitation, as adjusted, shall be reduced in a manner prescribed by the U.S. secretary of the treasury. [~~For plan years ending before January 1, 2002, that adjustment may not reduce the member's annual benefit below $75,000, if the member's benefit begins after age 55, or the actuarial equivalent of $75,000 beginning at age 55 if benefits begin before age 55. The preceding sentence will not apply to plan years ending after December 31, 2001.~~]

(2) If the annual benefit begins after the member attains age 65, the Internal Revenue Code §415(b)(1)(A) limitation, as adjusted, will be increased so that it is the actuarial equivalent of the Internal Revenue Code §415(b)(1)(A) limitation at age 65, in accordance with guidance issued by the U.S. secretary of treasury.

(3) The portion of a member's benefit that is attributable to the member's own contributions (other than picked-up contributions) is not part of the annual benefit subject to the limitations of this section [~~§29.51~~]. Instead, the amount of those member contributions is treated as an annual addition to a qualified defined contribution plan maintained by the employer.

(b) The dollar limitation on annual benefits provided by this section [~~§29.51, but not the $75,000 limitation provided by subsection (a) of this section,~~] shall be adjusted annually as provided by §415(d) of the Internal Revenue Code and the regulations prescribed by the U.S. secretary of the treasury to reflect cost of living adjustments. The adjusted limitation is effective for TRS benefits for the TRS plan year that begins on or after the earliest allowable effective date of the changes under federal regulations.

(c) The limitation provided by this section [~~§29.51~~] for a member who has separated from service with a vested right to a pension shall be adjusted annually as provided by §415(d) of the Internal Revenue Code and the regulations prescribed by the U.S. secretary of the treasury. On and after July 1, 1995, in no event shall a member's annual benefit payable from TRS in any limitation year be greater than the

limit applicable at the annuity starting date, as increased in subsequent years pursuant to §415(d) of that code and the regulations thereunder.

(d) If the form of benefit is not a straight life (standard annuity) or qualified joint and survivor annuity (Option 1, 2, or 5 with a spousal beneficiary), then the applicable limit described in subsection (c) of this section shall be determined by either reducing §415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that take into account the death benefits under the form of benefit:

(1) For a benefit paid in a form to which §417(e)(3) of the Internal Revenue Code does not apply (Option 1, 2, or 5 with a non-spouse beneficiary, or Option 3 or 4), the actuarially equivalent straight life annuity benefit which is the greater of (or the reduced §415(b) of that code limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant; or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table described in §1.417(e)-1(d)(2) of the Income Tax Regulations (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(2) For a benefit paid in a form to which §417(e)(3) of the Internal Revenue Code applies (the deferred retirement option plan (DROP) or partial lump sum option (PLSO) portion of the benefit), the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced §415(b) of that code limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under §1.417(e)-1(d)(2) of the Income Tax Regulations (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under §1.417(e)-1(d)(3) of the Income Tax Regulations (the 30-year Treasury rate (prior to July 1, 2007, using the rate in effect for the month prior to retirement, and on and after July 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality table for the distribution under §1.417(e)-1(d)(2) of the regulations (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) [~~(d)~~] The following interest rate assumptions shall be used in computing the limitations under this section [~~§29.51~~].

[~~(1)~~] For the purpose of determining the portion of the annual benefit that is attributable to member contributions, the factors described in §411(c)(2)(B) and (C) of the Internal Revenue Code and the regulations thereunder shall be used even though §411 of that code [~~the Code~~] does not otherwise apply to the retirement system.

[~~(2) For the purpose of adjusting the annual benefit to a straight life annuity, the interest rate assumption is 5.0%, unless a different rate is required by the secretary of the treasury.~~]

[~~(3) For the purpose of adjusting the Internal Revenue Code §415(b)(1)(A) limitation after a member attains age 65, the interest rate assumption is 5.0%, unless a different rate is required by the secretary of the treasury, and the mortality decrement shall be ignored to the extent that a forfeiture does not occur at death.~~]

(f) [~~(e)~~] An adjustment under §415(d) of that code [~~the Code~~] may not be taken into account before the year for which that adjustment first takes effect.

(g) No adjustment is required for the value of qualified joint and survivor annuity benefits, preretirement disability or death benefits, post retirement medical benefits, or post retirement cost-of-living increases made in accordance with §415(d) of the Internal Revenue Code and §1.415-3(c) of the Income Tax Regulations. For a disability retirement benefit or a pre-retirement death benefit, no adjustment is required for payment made with respect to a member before the member reaches or would have reached age 62 or for payment made with respect to a member with fewer than ten years of service credit under TRS.

(h) [~~(f)~~] This plan may still pay an annual benefit to any member in excess of the member's maximum annual benefit otherwise allowed if:

(1) the annual benefit derived from the employer's contributions under all defined benefit plans of the employer subject to the limitations of §25.51 and §415 of the Internal Revenue Code does not in the aggregate exceed $10,000 for the plan year or for any prior plan year; and

(2) the member has not at any time participated in a defined contribution plan maintained by the employer. For purposes of this subsection, member contributions to the plan are not considered a separate defined contribution plan maintained by the employer.

(i) [~~(g)~~] If a member has fewer than ten years of actual membership service credit in the plan at the time the member begins to receive benefits under the plan, the Internal Revenue Code §415(b)(1)(A) limitation, as adjusted, shall be reduced by multiplying the limitation by a fraction in which the numerator is the number of years of service credit and the denominator is 10; provided, however, that the fraction may not be less than one-tenth. If the member has fewer than ten years of employment with the employer, the $10,000 limitation of subsection (h) [~~(f)~~] of this section shall be reduced in the same manner as provided in the preceding sentence, except the numerator shall be the number of actual years of employment with the employer rather than number of years of service credit.

§29.55. Limitation on Contributions.

[~~Contributions to the plan to establish service or compensation credit or for other purposes shall be limited in a plan year to the extent required by Internal Revenue Code §415 and accompanying regulations.~~

~~Payments to TRS are subject to §25.33 of this title (relating to Contribution Limitation Based on Compensation). The availability of service or compensation credit or benefits associated with such credit may be affected by limitations on contributions to the plan.~~]

(a) Notwithstanding any other provision of law to the contrary, TRS may refuse a request by a member to make a contribution to the retirement system for the purchase of service credit if the amount of the contribution would exceed the limits provided in §415 of the Internal Revenue Code.

(b) A member may use an installment payment plan to the extent permitted under applicable law to avoid a contribution in excess of the limits under §415(c) or §415(n) of the Internal Revenue Code.

(c) Effective for permissive service credit contributions made in years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under TRS, then the requirements of this section will be treated as met only if:

(1) the requirements of §415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of §415(b) of that code; or

(2) the requirements of §415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of §415(c) of that code.

(d) For purposes of applying subsection (c)(1) of this section, the retirement system will not fail to meet the reduced limit under §415(b)(2)(C) of the Internal Revenue Code solely by reason of this subsection, and for purposes of applying subsection (c)(2) of this section, the system will not fail to meet the percentage limitation under §415(c)(1)(B) of that code solely by reason of this subsection.

(e) For purposes of subsection (c) of this section the term "permissive service credit" means service credit:

(1) specifically authorized by state law and recognized by the retirement system for purposes of calculating a member's benefit under the system;

(2) which such member has not received under the system, prior to the purchase of such service credit; and

(3) which such member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

(f) Effective for permissive service credit contributions made in years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subsection (e)(2) of this section, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the System. Permissive service credit shall include:

(1) military service credit under Tex. Gov't Code §823.302;

(2) developmental leave service credit under Tex. Gov't Code §823.402;

(3) membership waiting period service credit under Tex. Gov't Code §823.406;

(4) substitute service credit under §25.4 of this title (relating to Substitutes);

(5) out-of-state service credit under Tex. Gov't Code §823.401;

(6) unused leave service credit under Tex. Gov't Code §823.403; and

(7) "additional service credit" under the service credit purchase option authorized by Tex. Gov't Code §823.405.

(g) The retirement system will fail to meet the requirements of subsection (c) of this section if:

(1) more than five years of nonqualified service credit are taken into account for purposes of subsection (c) of this section; or

(2) any nonqualified service credit is taken into account under subsection (c) of this section before the member has at least five years of participation under the system.

(h) For purposes of subsection (g) of this section, effective for permissive service credit contributions made in years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(1) service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in §415(k)(3) of the Internal Revenue Code);

(2) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in paragraph (1) of this subsection of an education organization described in §170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(3) service as an employee of an association of employees who are described in paragraph (1) of this subsection; or

(4) military service (other than qualified military service under §414(u) of the Internal Revenue Code) recognized by TRS.

(i) In the case of service described in subsection (h)(1) - (3) of this section, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan. The Internal Revenue Code standards for qualified permissive service credit as reflected in subsection (h)(1) - (4) of this section do not expand the authorized types of service credit available to be purchased under the TRS plan.

(j) In the case of a trustee-to-trustee transfer after December 31, 2001, to which §403(b)(13)(A) or §457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):

(1) the limitations of subsection (g) of this section will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(2) the distribution rules applicable under federal law to TRS will apply to such amounts and any benefits attributable to such amounts.

(k) For an eligible member, the limitation of §415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the statutes and rules applicable to TRS as in effect on August 5, 1997.

For purposes of this subsection, an eligible member is an individual who first became a member of TRS before September 1, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802692
Pattie Featherston
Chief Operating Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 421, Standards for Certification, §421.5, Definitions. The present language gives unfair advantage to out-of-state individuals seeking certification.

Mr. Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, there will be no public benefit as a result of this proposed amendment. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.021.

§421.5. Definitions.

The following words and terms, when used in this standards manual, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (35) (No change.)

(36) Reciprocity for IFSAC seals--Valid documentation of accreditation from the International Fire Service Accreditation Congress used for TCFP [~~certification which must be issued from another jurisdiction and which~~] may only be used for obtaining an initial certification.

(37) - (43) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 21, 2008.

TRD-200802661
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: July 6, 2008
For further information, please call: (512) 936-3838

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. CERTIFICATION AS A CPA

SUBCHAPTER F. EXPERIENCE REQUIREMENTS

22 TAC §511.122

The Texas State Board of Public Accountancy withdraws the proposed amendments to §511.122 which appeared in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2892).

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802708
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: May 23, 2008
For further information, please call: (512) 305-7848

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.132

The Texas State Board of Public Accountancy withdraws the proposed amendments to §523.132 which appeared in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1484).

Filed with the Office of the Secretary of State on May 23, 2008.

TRD-200802709
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: May 23, 2008
For further information, please call: (512) 305-7848

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TITLE 34. PUBLIC FINANCE

PART 12. STATE EMPLOYEE CHARITABLE CAMPAIGN

CHAPTER 329. ELIGIBILITY CRITERIA FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §329.1

The State Employee Charitable Campaign withdraws the proposed amendments to §329.1 which appeared in the January 25, 2008, issue of the *Texas Register* (33 TexReg 659).

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802680
Mike Esparza
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Effective date: May 22, 2008
For further information, please call: (512) 475-0387

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CHAPTER 330. ELIGIBILITY CRITERIA FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §330.1

The State Employee Charitable Campaign withdraws the proposed amendments to §330.1 which appeared in the January 25, 2008, issue of the *Texas Register* (33 TexReg 661).

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802681
Mike Esparza
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Effective date: May 22, 2008
For further information, please call: (512) 475-0387

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 122. SPACE MANAGEMENT

1 TAC §§122.1 - 122.3

The Texas Facilities Commission (the "Commission") adopts amendments to §§122.1 - 122.3 concerning state agency requests for allocation, relinquishment, or modification of space in facilities under the Commission's control. In addition, this chapter establishes General Space Allocation Guidelines applicable to certain facilities owned or leased by the State of Texas and further provides for state agency requests for waivers from such Guidelines and appeals from Commission determinations concerning space allocation. The amended sections are adopted without changes to the proposed text, as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2763).

Justification for the Rule.

The amended sections update references to the Commission's agency name and agency Internet website address, delete definitions that are no longer in use in this chapter, and correct typographical errors, including reformatting. The amended sections further emphasize the Commission's process for state agency requests for allocation, relinquishment, or modification of space in facilities under the Commission's control.

Amended §122.1 provides definitions for terms and phrases used in this chapter and in studies and reports conducted in accordance with Texas Government Code, Chapter 2165, Subchapter C. Section 122.2 addresses requests for allocation, relinquishment, or modification of space in facilities under the Commission's control, whether owned or leased by the State of Texas, including submission of such requests and consideration by the Commission. Section 122.3 establishes general space allocation guidelines, provides for state agency requests for waivers from such guidelines, and further establishes an appeal process from Commission determinations on space allocation.

Summary of Comments.

The comment period ended May 4, 2008. No comments were received regarding the adoption of the new rules.

Statutory Authority.

The amendments are adopted under Texas Government Code, §2165.104(c) (Vernon Supp. 2007) and §2165.108 (Vernon 2000), which require the Commission to adopt rules concerning the allocation of space management and the administration of Commission functions related to managing space in State of Texas property.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2008.

TRD-200802662
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: June 10, 2008
Proposal publication date: April 4, 2008
For further information, please call: (512) 463-7220

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 55. SWINE

4 TAC §55.3

The Texas Animal Health Commission ("TAHC" or "Commission") adopts amendments to Chapter 55, §55.3 concerning the Feeding of Garbage to Swine, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2099) and will not be republished.

Section 55.3 contains requirements for registration of people who feed unrestricted garbage to swine.

This adoption will add an explicit requirement that the swine will need to be tested by the Commission for pseudorabies and Brucellosis. Because these permitted operations can be a high risk for diseases the Commission believes that the swine should be tested for pseudorabies and Brucellosis as part of the regulatory process in order to protect against the risk of exposure. Brucellosis and pseudorabies and other diseases are of concern to the Commission because of the high risk that may be transmitted among swine or to other species of livestock. This added requirement by the Commission allows the agency to require a test or tests of swine on the registered location at any time the Commission determines that the risk is sufficient, based on a risk assessment, to warrant a test. The amendment is being added in §55.3(c) under permit requirements. Language was also added to state that as determined by disease risk assessment to require the testing of swine for diseases determined to pose a risk to other swine. The test will be performed by agency personnel.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also §165.026 of the Texas Agriculture Code provides the Commission with specific statutory authority to regulate and register people who feed unrestricted garbage to swine. Specifically, in subsection (c) it provides that "(t)he commission may adopt rules for registration under this section, including rules providing for registration issuance, revocation, and renewal, disease tests, inspections, bookkeeping, and appropriate handling and treatment of unrestricted garbage."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802694
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: June 11, 2008
Proposal publication date: March 14, 2008
For further information, please call: (512) 719-0700

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.5

The Texas Appraiser Licensing and Certification Board (TALCB) adopts an amendment to §153.5 regarding Fees without changes to the proposed text as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2772) and will not be republished.

The amendment reduces the fee for temporary nonresident appraiser registration from $180 to $150.

The reasoned justification for the rule as adopted is compliance with Appraisal Subcommittee requirements as necessary to maintain TALCB's federal certification and ability to continue licensing and certifying appraisers.

No comments were received regarding the amendments as proposed.

The amendment is adopted under Texas Occupations Code §1103.156, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802669
Devon V. Bijansky
Assistant General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: June 11, 2008
Proposal publication date: April 4, 2008
For further information, please call: (512) 465-3900

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22 TAC §153.17

The Texas Appraiser Licensing and Certification Board (TALCB) adopts an amendment to §153.17(c) regarding Renewal or Extension of Certification and License or Renewal of Trainee Approval without changes to the proposed text as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2773) and will not be republished.

The amendment reduces the length of time for deferral of continuing education requirements for appraisers returning from active military service. The period of deferral is reduced from 180 days to 90 days.

The reasoned justification for the rule as adopted is that the rule will conform to Appraisal Subcommittee requirements as required to maintain TALCB's federal certification and ability to continue licensing and certifying appraisers. The amendment will also ensure that appraisers returning from active duty become current on their continuing education requirements more promptly.

No comments were received regarding the amendment as proposed.

The amendment is adopted under the Texas Occupations Code §1103.153, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to appraiser continuing education requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802670
Devon V. Bijansky
Assistant General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: June 11, 2008
Proposal publication date: April 4, 2008
For further information, please call: (512) 465-3900

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.52

The Texas State Board of Public Accountancy adopts an amendment to §501.52 concerning Definitions without changes to the

proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2888). The text of the rule will not be republished.

The amendment will replace "(22)" with "(21)" in paragraph (17).

The amendment will function by providing clearer definitions that are consistent with changes in the Texas Public Accountancy Act as well as changes in other Board rules.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802682
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: June 11, 2008
Proposal publication date: April 11, 2008
For further information, please call: (512) 305-7848

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.75

The Texas State Board of Public Accountancy adopts an amendment to §501.75 concerning Confidential Client Communications without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2890). The text of the rule will not be republished.

The amendment replaces the word "subpoena" with the phrase "court order".

The amendment will function by mirroring the requirement in the Texas Public Accountancy Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802683
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: June 11, 2008
Proposal publication date: April 11, 2008
For further information, please call: (512) 305-7848

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CHAPTER 511. ELIGIBILITY
SUBCHAPTER C. EDUCATION REQUIREMENTS

22 TAC §511.59

The Texas State Board of Public Accountancy adopts new §511.59 concerning Definition of 150 Semester Hours without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2891). The text of the rule will not be republished.

The new rule is needed in order for individuals interested in becoming Certified Public Accountants to know the minimum educational criteria for applying to take the CPA exam and the proposed revision identifies the minimum educational criteria.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.005 of the Act which requires the Board with the responsibility of assuring that the admission of persons to the practice of public accountancy in Texas have the education and experience commensurate with the requirements of the profession.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802689
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: June 11, 2008
Proposal publication date: April 11, 2008
For further information, please call: (512) 305-7848

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SUBCHAPTER H. CERTIFICATION

22 TAC §511.163

The Texas State Board of Public Accountancy adopts an amendment to §511.163 concerning Board Approved Ethics Requirement and Examination on the Rules of Professional Conduct without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2893). The text of the rule will not be republished.

The amendment delete the original subsection (a); add new subsection (a), the new text will be "Candidates applying for the is-

suance of the CPA certificate who have not completed a board-approved ethics course within the past two years to meet the education requirements to take the CPA Examination, must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board (chapter 501) offered through a board-approved and registered provider of continuing professional education."; add new subsection (b) with the new text "Candidates applying for the issuance of the CPA certificate who completed a board-approved ethics course to meet the education requirements to take the CPA Examination more than two years prior to the date of submitting the application for issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, (chapter 501) offered through a board-approved and registered provider of continuing professional education."; renumber the original subsection (b) with subsection (c); renumber the original subsection (c) with paragraph (1) and add the text "on the Rules of Professional Conduct"; renumber subsection (d) with paragraph (2); renumber subsection (d)(1) with subparagraph (A); delete subsection (d)(2).

The amendment will function by clarifying where a test candidate can find the rules that form the basis of the test on the rules of professional conduct and allows the candidate to take a second re-exam rather than waiting six months.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802684
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: June 11, 2008
Proposal publication date: April 11, 2008
For further information, please call: (512) 305-7848

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CHAPTER 511. CERTIFICATION AS A CPA
SUBCHAPTER H. CERTIFICATION

22 TAC §§511.164 - 511.167, 511.171, 511.173, 511.174, 511.176

The Texas State Board of Public Accountancy adopts the repeal of §511.164, Names on Certificate, §511.165, Certificate, §511.166, Replacement Certificates, §511.167, Relinquishing a Certificate or Registration, §511.171, Voluntary Surrender of Certificate, §511.173, Filing Complaints, §511.174, Action Relating to Complaints, and §511.176, Certification Hearings without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2894). The sections will not be republished.

The repeals will remove rules that are no longer relevant.

The repeals will function by allowing the rules to be reorganized as a new chapter.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 514. CERTIFICATION AS A CPA

22 TAC §§514.1 - 514.7

The Texas State Board of Public Accountancy adopts new §514.1 concerning Names on Certificates, §514.2 concerning Certificate, §514.3 concerning Replacement Certificates, §514.4 concerning Filing Complaints, §514.5 concerning Action Relating to Complaints, §514.6 concerning Voluntary Surrender of Certificate, and §514.7 concerning Certification Hearings without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2895). The text of the rules will not be republished.

The new rules are needed in order for licensees and the public to understand the certification process with the board and the rules will specifically identify how the licensee's name will appear on the licensee's certificate, how replacement certificates may be obtained, how complaints can be filed with and investigated by the board, how a licensee may surrender a certificate and the criteria for the board not certifying a candidate for licensure.

No comments were received regarding adoption of the rules.

The new rules are adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER D. PROCEDURES AFTER HEARING

22 TAC §519.72

The Texas State Board of Public Accountancy adopts an amendment to §519.72 concerning Final Decisions and Orders without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2897). The text of the rule will not be republished.

The amendment will be to replace "(c) It is the policy of the board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ when the proposed order is: (1) erroneous; (2) against the weight of the evidence; (3) based on unsound accounting principles or auditing standards; (4) based on insufficient review of the evidence; (5) not sufficient to protect the public interest; (6) not sufficient to adequately allow rehabilitation of the licensee; (7) an infringement on the board's discretion to determine the board's policies; or (8) to correct a technical error." with the new literature which reads "(c) The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines: (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided to the administrative law judge with a written statement of applicable rules or policies, or prior administrative decisions; (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or (3) that a technical error in a finding of fact should be changed."

The amendment will function by public benefits expected as a result of adoption of the proposed amendment will be none.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.112

The Texas State Board of Public Accountancy adopts an amendment to §523.112 concerning Mandatory CPE Attendance without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2898). The text of the rule will not be republished.

The amendment to §523.112 will replace the phrase "(3)(B), (C), (D), and (F)" in paragraph (5) with "(3)(A), (B), (C), (D), (E) and (F)".

The amendment will function by providing greater clarity regarding the continuing professional education requirements necessary to reactivate a license

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.143

The Texas State Board of Public Accountancy adopts an amendment to §523.143 concerning Sponsor's Record without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2900). The text of the rule will not be republished.

The amendment will require CPE sponsors to keep a copy of the complete course material as required by §523.140 rather than just an outline for the course

The amendment will function by providing a more thorough record for CPE sponsors.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER I. COMPUTER EQUIPMENT RECYCLING PROGRAM

30 TAC §§328.131, 328.133, 328.135, 328.137, 328.139, 328.141, 328.143, 328.145, 328.147, 328.149, 328.151, 328.153, 328.155

The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §§328.131, 328.133, 328.135, 328.137, 328.139, 328.141, 328.143, 328.145, 328.147, 328.149, 328.151, 328.153, and 328.155.

The commission adopts new §§328.131, 328.143, 328.145, 328.147, 328.151 and 328.155 *without changes* to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9536); these sections will not be republished. The commission adopts new §§328.133, 328.135, 328.137, 328.139, 328.141, 328.149, and 328.153 *with changes* to the proposed text.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2714, passed by the 80th Legislature, 2007, requires the commission to help implement a computer-recycling program based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state. The legislation authorizes the commission to adopt rules to help implement the program. The TCEQ will be able to help implement the program more efficiently with the adopted rules.

A stakeholder meeting was held on July 13, 2007. Since there was no draft rule before the stakeholder meeting, the proposed rules were based on stakeholder input, including much of the proposed rules that were essentially unchanged language from the legislation. The adopted rules reflect stakeholder input received both before and during the official comment period. Much of the adopted rule remains verbatim from the legislation. Per comments received, the commission's duties under HB 2714, proposed to be incorporated into procedures, are in the adopted rule.

SECTION BY SECTION DISCUSSION

§328.131, Purpose

Adopted new §328.131 explains the purpose of adopted new Subchapter I, Computer Equipment Recycling Program, which is to help establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment.

§328.133, Applicability and Effective Date

Adopted new §328.133 seeks to clarify the legislation in two ways. Subsection (c) describes the persons to whom the subchapter applies; the adopted rule has been changed to make these descriptions more succinct and to clarify that the subchapter also has applicability to computer-equipment recyclers. Subsection (e) clarifies which rules apply to facilities involved, under this subchapter or otherwise, in the collection of used computer equipment for recycling or the recycling of used computer equipment. Regarding this, the wording from the proposal has changed to clarify which facilities the cited rules apply to. Also, the phrase "as applicable" has been added to §328.133(e) to clarify that not all of the rules listed in that section apply to all facilities involved in the collection of used computer equipment for recycling or the recycling of used computer equipment. Additionally, language has been added to that of the proposal to emphasize that facilities involved in the collection of used computer equipment for recycling or the recycling of used computer equipment also must comply with, as applicable, §328.149. Also note, pursuant to HB 2714, the effective date of the enforcement provisions of §328.143(d) and (e) and of the penalty provisions of §328.153 and §328.155 is September 1, 2008, regardless of the effective date of the rest of this rule.

§328.135, Definitions

Adopted new §328.135 defines terms. The commission adopts definitions in addition to those listed in HB 2714: for "computer," "desktop computers," "laptop computers," "notebook computers," "recycler," "recycling," "retailer," "reuse," and "tuner." This is because the terms, "computer" and "retailer," are used, but not defined, in HB 2714. The adopted definition of "computer" is different from the proposed definition and based on stakeholder input. The commission adopts a definition of "retailer" based on a definition submitted by the Honorable Kirk Watson, Texas Senate, the sponsor of HB 2714; the definition is unchanged from proposal. The term, "tuner," is uncommon enough in everyday dialect that defining it should be helpful. Its adopted definition is from the dictionary and unchanged from proposal. From the practical standpoint of discarding a "computer," keyboards and mice are essentially synonymous with "computer"; thus, the commission also adopts the addition of two items to the legislation's definition of "computer equipment:" a keyboard and a mouse. This aspect of the definition of "computer equipment" is unchanged from proposal. The commission has added definitions to those that were proposed, for desktop computers, laptop computers, notebook computers, recycler, recycling, and reuse. The commission added five of those definitions in response to commenter input. The commission has also added a sixth definition, for "recycler," to define the persons (recyclers) to whom the mandatory standards apply. At the

April 2, 2008 agenda meeting, the commission instructed the executive director to draft certain standards, as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Inc., April 25, 2006, as mandatory for computer-equipment recyclers under this subchapter. The commission has renumbered the definitions section as a result.

§328.137, Manufacturer Responsibilities

Adopted new §328.137 lists the responsibilities of manufacturers under the adopted subchapter. The responsibilities are essentially unchanged from those listed in the legislation, with the exception of minor reorganization, some clarifications, and a substitution for one term. The legislation uses the phrase, "computer equipment that has reached the end of its useful life," whereas §328.137(b)(1), incorporates the phrase, "used computer equipment." This is because computer equipment that has reached the end of its useful life for one consumer may still be useful for another. The adopted language is an effort to be consistent with the legislation's intent. In §328.137(b)(2), the commission has changed the term, "manufacturer's computer equipment" to "computer equipment labeled with the manufacturer's brand(s)." Due to the possibility of an Internet link changing, §328.137(b)(2) stipulates that if a manufacturer's Internet link to recovery information is going to change, the manufacturer notify the commission 30 days in advance of the change. In the adopted rule, the commission has rearranged part of §328.137 by moving subsection (c) to new paragraph (b)(3). The requirements in the proposal called for Texas manufacturers to provide collection of computer equipment that was reasonably convenient and designed to meet the needs of Texas consumers. The rearrangement does not change this requirement. The rearrangement simply requires manufacturers, in addition, to state in their recovery plans their obligation to provide reasonably convenient collection of computer equipment designed to meet the needs of Texas consumers. The commission has renumbered the rest of the section as a result of the rearrangement.

Adopted new §328.137(f)(1) requires a manufacturer to include, on its publicly available Internet site, a list of all of the manufacturer's brands, both those in use and no longer in use. Adopted new §328.137(f)(2) requires manufacturers to submit recovery plans and notifications to the commission by July 1, 2008. This will give manufacturers two months to prepare their recovery plans. The commission is offering Format for Computer Recycling Notification and Recovery Plan (see Figure: 30 TAC Chapter 328--Preamble) as an example format for an acceptable plan. The example format includes a statement that was not in the proposal preamble, a restatement of a manufacturer's obligation to provide reasonably convenient collection of computer equipment designed to meet the needs of Texas consumers. The commission will have from July 1, 2008, until September 1, 2008, to ensure that all recovery plans submitted are in accordance with adopted new §328.137(b). The commission's understanding is that adopted new §328.137(b) comprises the minimum content that a recovery plan has to include. Thus, the commission requests all manufacturers who submit recovery plans to submit them in the example format. The agency is exploring the use of its current electronic reporting systems to facilitate this requirement. At a minimum, manufacturers will be able to download an electronic form to send in. The commission prefers that any additional details not be in the recovery plan submitted to the TCEQ, but rather be available to the public and the commission through the required Internet link. Manufacturers should submit more detailed plans only if the commission requests that any further details be submitted as a separate attachment.

Figure: 30 TAC Chapter 328--Preamble

Per comments received, adopted new §328.137(c) expands the proposed language to make it more clear that the examples of collection methods listed are in fact, examples, and that there are other collection methods not listed that may meet the convenience requirements of the section. Per comments received, §328.137(c)(1) adds to the proposed language, stating that if a manufacturer offered a mail-back option, a consumer would not have to pay mailing, shipping, handling, or any other costs directly related to mailing at the time of recycling.

Per comments received, §328.137(d) has language in addition to what was proposed, making it explicit that local governments are other suitable operations.

Adopted new §328.137(g)(2) includes a certification statement that will constitute the documentation verifying the collection, recycling, and reuse of computer equipment in a manner that complies with adopted new §328.149. Per request of HB 2714's author, The Honorable Dennis Bonnen, Texas House of Representatives (Representative Bonnen), and another commentor, the language in §328.137(g)(2) has been simplified from the proposal.

§328.139, Retailer Responsibilities

The adopted responsibilities in §328.139 are essentially unchanged from the retailer responsibilities listed in the legislation, except for minor reorganization and clarification. The legislation makes reference to two commission lists that a manufacturer would have to be on before retailers could sell that manufacturer's computer equipment. One list is of computer manufacturers with recovery plans, while the other is a list of computer manufacturers that have notified the commission that they have compliant collection programs. To minimize the steps needed for compliance, the commission has combined the two lists into one list: manufacturers that have recovery plans and have notified the commission that they have compliant collection programs.

Also, in §328.139(c), the commission has clarified at adoption that this subsection means that a retailer that is also a manufacturer is required to collect its computer equipment, although not at its retail outlets.

§328.141, Consumer Responsibilities and Commission Responsibilities

Adopted §328.141 contains the same consumer responsibilities as contained in the legislation, except in the adoption the term, "computer equipment that has reached the end of its useful life," is replaced with the term, "used computer equipment." Computer equipment that has reached the end of its useful life for one consumer may still be useful for another. The adopted language is an effort to be more consistent with the legislation's intent. In response to comments from Representative Bonnen and other stakeholders, at adoption, new §328.141 also conglomerates the duties of the commission under HB 2714.

§328.143, Enforcement

Adopted new §328.143 contains the enforcement provisions of the adopted subchapter, and follows the legislation's section on enforcement verbatim, except for section citations that need to be specific to the adopted rule.

§328.145, Financial and Proprietary Information

Adopted new §328.145 follows the legislation's section on financial and proprietary information verbatim.

§328.147, Liability

Adopted new §328.147 follows the legislation's section on liability verbatim.

§328.149, Sound Environmental Management

The commission adopts new §328.149 with significant differences from the proposed rule. HB 2714 requires the commission to adopt either the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc. (ISRI), April 25, 2006, or other standards from a comparable nationally recognized organization. The commission is exercising its authority to adopt certain portions of the ISRI standards. At the April 2, 2008, commissioners' agenda, the commissioners directed staff to draft rule language mandating the ISRI standards, except for the portions of the standards relating to export and prison labor, and other portions more appropriately left voluntary. The executive director has done this. The commission has also added language to reiterate the applicability section of this subchapter. Specifically, the language highlights that the adopted ISRI standards: 1) apply only to computer equipment used primarily for home or home-business purposes and returned to the manufacturer by a consumer; and 2) do not impose any obligation on an owner or operator of a solid waste facility.

In addition, the adopted section includes a provision whereby, if the United States Environmental Protection Agency (EPA) adopted similar standards that were deemed to be an acceptable substitute by the commission, the commission could by rule revoke the ISRI standards and adopt the EPA standards. HB 2714 does not require this provision; a stakeholder suggested, prior to proposal, including a provision whereby, if the TCEQ deemed any future EPA standards to be an acceptable substitute for the ISRI standards, the ISRI standards would be automatically revoked and the EPA standards would be automatically adopted by this rule, with no further rulemaking necessary. Stakeholders voiced support for this provision during the comment period. This provision was proposed with acceptance of the EPA standards at the discretion of the executive director, rather than the commission, but in the adoption the acceptance of the EPA standards has been changed to be at the discretion of the commission. Also, the automatic-adoption provision has been removed.

In order to harmonize the ISRI standards with the commission's action on a motion for continuance and the adopted rules, the commission has redacted the ISRI standards. The commission is not adopting the PURPOSE section of the ISRI standards since it identifies all ISRI standards as voluntary. Due to differing subject matter and conflicts between definitions found in adopted §328.135 and those found in the DEFINITIONS section of the ISRI standards, the commission is not adopting the DEFINITIONS section of the ISRI standards. The commission has removed any inapplicable terms and replaced them with terms that are consistent with HB 2714 and the subject matter of the adopted rules.

In adopted §328.149(b)(1)(A), relating to the manual dismantling or processing of computer equipment, the commission is not adopting the phrase "all practicable" found in Subsection (a) of the GENERAL REQUIREMENTS section of the ISRI standards due to the term's ambiguity and potential to cause confusion. Instead, the commission uses §328.4(b) to provide more concrete, enforceable provisions.

Adopted §328.149(b)(1)(B), relating to the disposal of computer equipment that cannot be refurbished, reused, or recycled, elaborates on Subsection (b) of the GENERAL REQUIREMENTS section of the ISRI standards by referencing preexisting commission rules that govern recycling. Adopted §328.149(b)(1)(C), relating to commercial contracts for the transfer of computer equipment intended for recycling, adopts as mandatory, Subsection (c) of the GENERAL REQUIREMENTS section of the ISRI standards with changes to this part of the ISRI standards to mirror HB 2714 and this rule.

Adopted §328.149(b)(1)(D), relating to the retention of business records, adopts as mandatory Subsection (d) of the GENERAL REQUIREMENTS section of the ISRI standards, except it reduces the record-keeping aspect of the subsection from potentially requiring cradle-to-grave tracking by each recycler to requiring tracking by recyclers such that a cradle-to-grave path could be deduced if needed. Adopted §328.149(b)(1)(E), relating to the maintenance of written work practices addressing specific media, adopts as mandatory Subsection (e) of the GENERAL REQUIREMENTS section of the ISRI standards, while excluding work practices addressing toner or inks. The commission is not adopting as mandatory Subsection (f) of the GENERAL REQUIREMENTS section of the ISRI standards, relating to liability insurance, because of excessive potential impact on small businesses. The commission is not adopting as mandatory Subsection (g) of the GENERAL REQUIREMENTS section of the ISRI standards, relating to workers' compensation insurance, since participation in a workers' compensation program in Texas is voluntary for most employers.

Adopted §328.149(b)(1)(F), relating to storage and processing of computer equipment, adopts as mandatory Subsection (h) of the GENERAL REQUIREMENTS section of the ISRI standards, with changes to the standards' terms to mirror HB 2714. The commission is not adopting as mandatory Subsection (i) of the GENERAL REQUIREMENTS section of the ISRI standards, relating to Environmental, Health and Safety Management Systems. The commission has chosen to not require environmental management systems due to the potential financial impact on computer-equipment recyclers that are small businesses. The commission encourages recyclers to implement performance-driven environmental management systems. Adopted §328.149(b)(1)(G), relating to the packaging of computer equipment designated for reuse or processing, adopts as mandatory Subsection (j) of the GENERAL REQUIREMENTS section of the ISRI standards, with changes to the standard's terms to mirror HB 2714. The commission is not adopting as mandatory Subsection (k) of the GENERAL REQUIREMENTS section of the ISRI standards pursuant to the commission's April 2, 2008 action on a motion of continuance, which specifically excluded the adoption of mandatory provisions relating to the use of prison labor. Adopted §328.149(b)(1)(H), relating to closure and financial assurance requirements, substitutes the standards found in Subsection (l) of the GENERAL REQUIREMENTS section of the ISRI standards with preexisting commission rules.

In adopted §328.149(b)(2)(A), relating to the manual dismantling and processing of computer equipment for useable components and/or commodities, the commission is not adopting the phrase "all practicable" found in Subsection (a) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards due to the term's ambiguity and potential to

cause confusion. Instead, the commission uses §328.4 of this title and §328.149(b)(1)(B) of this title, to provide more concrete, enforceable provisions. Adopted §328.149(b)(2)(B) adopts as mandatory Subsection (b) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards with one change to match terminology used in the standard with terms used in HB 2714. The commission is not adopting as mandatory Subsection (c) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards due to the fact that the regulation of worker safety at non-permitted private entities and the enforcement of Occupational Safety and Health Association (OSHA) standards are outside of the TCEQ's jurisdiction.

The commission is not adopting as mandatory Subsection (d) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards, relating to pollution liability insurance, because of the potential financial impact on computer-equipment recyclers that are small businesses. The commission is not adopting as mandatory Subsections (e) and (f) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards due to the fact that the regulation of worker safety at non-permitted private entities is outside of the TCEQ's jurisdiction. In adopted §328.149(b)(2)(C), relating to the management, recycling, and disposal of hazardous substances, the commission substitutes standards found in Subsection (g) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards with preexisting commission rules.

The commission is not adopting as mandatory any portion of the EXPORTS section of the ISRI standards pursuant to the commission's April 2, 2008 action which specifically excluded the adoption of mandatory provisions relating to foreign exports. The commission is not adopting as mandatory any portion of the DATA SANITIZATION section of the ISRI standards due to the fact that it conflicts with §328.141 of the adopted rules, §328.147 of this title, and HB 2714.

§328.151, Federal Preemption; Expiration

Adopted new §328.151 follows the legislation's section on federal preemption and expiration verbatim.

§328.153, Amount of Penalties

The commission adopts new §328.153 to describe, in a slightly more detailed, specific fashion, HB 2714, §2, 80th Legislature, 2007, relating to the amount of penalties. The commission has made a nonsubstantive change from the proposal, in §328.153(e), substituting the phrase, "Texas Health and Safety Code, Chapter 361, Subchapter Y" for the phrase, "this subchapter." The commission has also made a change to the proposed language adding an indication that the amount of penalty assessed against a recycling facility for a violation of Subchapter I of Chapter 328 shall be determined by the enforcement protocols established for the subchapter.

§328.155, Disposition of Penalty

Adopted new §328.155 follows HB 2714, §3, 80th Legislature, 2007, relating to disposition of penalty verbatim, except for section references that need to be specific to the adopted rules.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the statute.

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rules is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. Furthermore, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety. With the caveat that the collection of computer equipment must be reasonably convenient and available to the consumer, the adopted rules afford manufacturers the opportunity to establish collection programs tailored to their individual needs. The flexibility of the adopted rules will allow manufacturers to develop the most cost-effective means of meeting the recycling requirements. This should prevent the adopted rules from adversely affecting the economy in a material way. The commission concludes that the adopted rules do not meet the definition of a major environmental rule.

In addition to the fact that the adopted rules do not meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) was adopted solely under the general powers of the agency instead of under a specific state law.

First, applicable federal standards for the collection and recycling of computer equipment do not currently exist and HB 2714, §4(a), 80th Legislature, 2007, authorizes the commission to adopt any rules required to implement the act. Second, the adopted rules are in direct response to HB 2714 and do not exceed its requirements. Third, the adopted rules do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the adopted rules will be adopted under the authority of HB 2714, §4(a), 80th Legislature, 2007, which authorizes the commission to adopt any rules required to implement the act. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment regarding the Regulatory Impact Analysis determination during the comment period. No comments were received, regarding the determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the adopted rules do not constitute a taking. The specific pur-

pose of the adopted rules is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. This rulemaking substantially advances this stated purpose by establishing a computer equipment recycling program, thereby reducing the adverse impact on human health and the environment that results from the improper disposal of those materials.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the health and safety purpose, and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. This rulemaking substantially advances this stated purpose by establishing a computer equipment recycling program, thereby reducing the adverse impact on human health and the environment that results from the improper disposal of those materials.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Computers and related display devices are critical elements to the strength and growth of this state's economic prosperity and quality of life. These rules establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of used computer equipment based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state. Since computers and related display devices are not real property, the adopted regulations do not affect a landowner's right in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to real property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and determined that the adopted rules are neither identified in, nor will they affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the adopted rules are not subject to the CMP.

PUBLIC COMMENT

The commission held a public hearing on this proposal on January 14, 2008, in Austin at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The public comment period closed on February 4, 2008.

Oral comments were received from DonateIT, LLC and nine representatives from the Texas Campaign for the Environment at the public hearing.

Written comments were received from: The Honorable Dennis Bonnen, Texas House of Representatives (Representative Bonnen), the author of HB 2714; The Honorable Kirk Watson, Texas Senate (Senator Watson), the sponsor of HB 2714; The Honorable Allen Vaught, Texas House of Representatives (Representative Vaught); the Texas Campaign for the Environment (TCE); Dell, Inc. (Dell); Hewlett Packard, Inc. (HP); The Honorable Pat Evans, Mayor of Plano, Texas (Mayor Evans); The Honorable Elizabeth 'Liz' Sumter, Hays County Judge (Judge Sumter); The Honorable Bill Magers, Mayor of Sherman, Texas (Mayor Magers); José R. Rodríguez, El Paso County Attorney (Mr. Rodríguez); J. Herbert Burkman and Associates (Burkman and Associates); the Law Offices of John B. Polk, P.C. (Polk); The Honorable Samuel T. Biscoe, Travis County Judge (Judge Biscoe); The Honorable Ron Davis, Travis County Precinct One Commissioner (Commissioner Davis); The Honorable Sarah Eckhardt, Travis County Precinct Two Commissioner (Commissioner Eckhardt); The Honorable Gerald Daugherty, Travis County Precinct Three Commissioner (Commissioner Daugherty); The Honorable Margaret Gómez, Travis Texas County Precinct Four Commissioner (Commissioner Gómez); DonateIT, LLC; the American Electronics Association (AEA); The Honorable Steve Swan, Mayor of Lakeway (Mayor Swan); Waste Management Recycle America; Citizens Against Montgomery Landfill; Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association; Mount Hutto Aware Citizens; Highway 359 Coalition; Luella Neighborhood Association; Citizens Against Ruffino Hills Transfer Station; Greater Fondren Southwest Super Neighborhood 36; Two Bush Community Action Group; Concerned Landfill Neighbors; Indian Creek Homeowners Association Landfill Committee; Sustainable Energy and Economic Development Coalition; Environmental Defense Texas Office; CLEAN Houston; the City of Houston; the Information Technology Industry Council (ITIC); The Honorable Linda L. Koop, Councilwoman, City of Dallas (Councilwoman Koop).

In addition, over 3,500 individuals provided both general and specific comments on the proposed rules.

RESPONSE TO COMMENTS

Many individuals made general comments encouraging environmental protection as a policy of the commission.

The commission agrees with these comments. However, the comments do not ask for any specific changes to the rule. No changes have been made in response to these comments.

Many individuals made comments that were not directly related to the rulemaking. Several examples follow. One individual urged the commission to make HB 2714 the standard for all states. Several individuals asked the commission to improve their local recycling options (for all recyclables, not just computer equipment). Several individuals asked the commission to "tell TV makers to help safely dispose of their products." Several individuals asked the commission to make the disposal of computers and televisions illegal. Several individuals expressed their wish for manufacturers to take a proactive stand on how their products are being recycled. Several individuals said the United States (U.S.) should ratify the Basel Convention and the Basel Ban amendment. Several individuals asked that the U.S. immediately comply with the 1986 Organization for Economic Co-operation and Development Council Decision.

The commission appreciates these comments, but they are beyond the scope of the rulemaking. No changes have been made in response to these comments.

Many individuals who submitted comments asked the commission to change or amend HB 2714 in one way or another.

The commission appreciates these comments, however, the commission does not have the authority to change or amend legislation. Nonetheless, the commission has responded to substantive comments asking for changes to HB 2714 in subsequent response to comments, to accommodate for the possibility that some individuals are not aware of the commission's inability to amend legislation or that they meant to refer to the rules instead of the legislation. The commission has treated requests for changes to the legislation as if they were requests for changes to the proposed rules.

The 3,500-plus individuals who sent in an identical form letter and Representative Vaught urged the commission "not to weaken the strong e-waste recycling standards set by HB 2714." Several individuals specifically asked the commission to strengthen the standards set by HB 2714.

The commission agrees with this comment. The commission has not weakened the standards set by HB 2714. The rules both adhere strictly to HB 2714's standards and, in some parts, strengthen the standards, e.g., by adding mice and keyboards made by the same manufacturer as the rest of the computer to the definition of computer equipment. The commission would like to point out that it prefers the use of the term "used electronics" to the term "e-waste." High percentages of used electronics are reusable and recyclable, and thus not waste unless disposed of in a landfill or abandoned. No changes have been made in response to this comment.

The 3,500-plus individuals who sent in the form letter and Representative Vaught asked the commission to "uphold the definitions outlining the types of electronics covered by the bill."

The commission agrees with this comment. In addition to upholding the definitions outlining the types of electronics covered by the bill, the commission has expanded the definition of computer equipment to include certain mice and keyboards. The commission has not made any changes in response to this comment.

The 3,500-plus individuals who sent in the form letter and Representative Vaught commented that "{d}isplay devices without a TV tuner are covered under the law, so producers should be responsible." Similarly, Mr. Rodríguez, Mr. Polk, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Texas Commissioner Daugherty, Commissioner Gómez, Judge Sumter, and over a dozen individuals urged the commission to include high definition televisions (HDTVs) in the definition of computer equipment because they understood that HDTVs were included under the definition in HB 2714 under the phrase "other display device that does not contain a tuner." As Judge Sumter expressed it, ". . . any 'display device that does not contain a tuner' is covered even if used like a television. Some new HDTV display devices do not meet the definition of a television; this equipment is therefore covered." Mayor Magers, Mayor Evans, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, two individuals, and DonateIT, LLC commented that "upholding the definitions of electronics covered by the bill ensures that the 'display devices without a tuner' will be recycled responsibly."

The commission respectfully disagrees with these comments. All display devices without a television tuner are not covered under the law. HB 2714's definition of computer equipment intends to cover other display devices that do not contain a tuner only if those display devices are used as part of a desktop or laptop computer. HDTVs and other display devices that are not used as part of a desktop or laptop computer are not covered under the law and are not covered under the adopted rule. The commission has changed the definition of "computer equipment" in §328.135(3) to clarify this applicability.

Representative Bonnen commented that the ". . . agency should not spend time and energy to review and approve/disapprove every recovery plan. Instead, the agency should focus its efforts on education and enforcement. The place for details about a manufacturer's recovery program is on the manufacturer's public Web site, not in the recovery plan itself." Dell made a comment to the same effect.

The commission agrees with these comments. The TCEQ will focus its efforts on education, compliance, and enforcement. The commission, before it puts a manufacturer on its Internet list of manufacturers with recovery plans, will ensure that a recovery plan is in accordance with the law. In the proposed rule, the place for details about a manufacturer's recovery program was on the manufacturer's public Web site, not in the recovery plan itself; in this regard, the adopted rule is the same. No changes have been made in response to this comment.

The 3,500-plus individuals who sent the form letter and Representative Vaught commented that the "{r}ules should require compliant recycling plans and reject those that do not provide convenient, responsible recycling for Texas consumers." Similarly, Mayor Evans, Mayor Magers, and Councilwoman Koop commented that the TCEQ must determine whether recovery plans will provide convenient recycling for residents of Texas.

The commission agrees that the rules should require compliant "recycling" plans (called "recovery" plans in HB 2714 and the adopted rule). The commission has made no change in response to that part of the comment. HB 2714 does not require recovery plans to be convenient; Texas Health and Safety Code (THSC), §361.955(c) requires that the collection of computer equipment be reasonably convenient. Therefore, the commission respectfully disagrees that the rules should require the commission to reject recovery plans that do not provide convenient recycling for Texas consumers. Requirements for recovery plans are located in THSC, §361.955(b) and (f), where there is no mention of "reasonably convenient." Nonetheless, the commission agrees that the rules can require plans in which manufacturers restate their statutory obligation to provide convenient, responsible collection of computer equipment for Texas consumers. Section 328.137 has been changed to require recovery plans to include a provision for convenient, responsible collection of computer equipment for Texans.

Mr. Rodríguez and Judge Sumter commented that "exporting toxic e-waste does not violate U.S. laws, but it does violate the laws of many of the importing countries. . . ." The TCE, Mr. Rodríguez, the City of Houston, and Judge Sumter suggested that

the TCEQ adopt a provision such as "A {recycler} must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of {covered equipment}." Similarly, Mr. Rodríguez and Judge Sumter also commented that TCEQ rules should require "documentation that the laws of importing countries are followed." The 3,500-plus individuals who sent in the form letter also commented that rules should require that the producer recycling programs do not violate the laws of importing countries.

While the commission is aware that certain foreign countries have limits on the importation of scrap electronics, the commission respectfully disagrees with incorporating the suggested language. Recyclers are required to comply with federal, state, and local law regardless of whether they operate within this subchapter. The commission agrees that all exporters of used electronics must abide by the laws of importing countries. The commission does not agree that TCEQ rules are the proper place to address this. Upon exporting used electronics, Texan and U.S. electronics recyclers must comply with the laws of the importing countries, regardless of whether the TCEQ rules restate this requirement. It would not be appropriate for the TCEQ rules to address this issue, because the TCEQ does not have the ability to enforce the laws of importing countries. If the TCEQ required documentation that the laws of importing countries be followed, the commission would not have the means to determine whether those laws were followed. No changes have been made in response to this comment.

Mr. Rodríguez and Judge Sumter commented that the ISRI standards preclude the use of prison labor and that the Texas rules should as well. Similarly, Burkman and Associates commented that the rules should not allow prison labor unless that labor is reasonably compensated with some wages set aside for use after release. DonateIT, LLC and Waste Management Recycle America commented that the rules should ban prison labor. The 3,500-plus individuals who sent in the form letter also commented that rules should require that the producer recycling programs do not use prison labor.

The commission respectfully disagrees with these comments. HB 2714 does not prohibit prison labor and the commission's action on a motion for continuance at their April 2, 2008 agenda meeting precluded making any portions of the ISRI standards relating to prison labor mandatory. No changes have been made in response to this comment.

Several individuals commented that they supported the use of prison labor in computer-equipment recycling programs. One individual suggested making prisoners available to staff call centers for electronics recycling companies.

Just as the commission understands (per the preceding response) that HB 2714 does not authorize the TCEQ to ban prison labor in computer-equipment recycling programs, neither does HB 2714 authorize the commission to support or require the use of prison labor in such programs. No changes have been made in response to this comment.

Representative Bonnen commented that he agrees that there should be no exemption for small businesses in the definition of "manufacturer," and that all manufacturers should offer consumers recycling programs. Senator Watson and Dell made comments with the same meaning.

The commission agrees with these comments. No such exemption exists in the rules. No changes have been made in response to this comment.

The TCE, Mr. Rodríguez, Mr. Polk, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, Judge Sumter, Dell, DonateIT LLC, Mayor Evans, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and over a dozen individuals commented in favor of the inclusion in the rule proposal of mice and keyboards in the definition of computer equipment.

The commission agrees with this comment. The commission has not made any changes in response to the comment.

HP commented that they presume the commission, in proposed §328.133(e), is referring to: a) locations within Texas that; b) perform physical reuse or recycling activities (testing for reuse, disassembly for recovery of materials, etc.) for computer equipment that is subject to HB 2714; and that the commission may wish to define "computer recycling facilities" to make this clear.

The commission respectfully disagrees with the presumption. For example, a computer manufacturer that was not physically involved in the collection or recycling of computers would still have to be in compliance with 30 TAC §335.6, even if it were merely sending its off specification computers to a recycler. In order to clarify this point, language in §328.133(e) has been changed from "Computer recycling facilities must be in compliance with: . . ." to "Facilities involved, under this subchapter or otherwise, in the collection of used computer equipment for recycling or the recycling of used computer equipment must be in compliance with: . . . ."

Dell suggested adding language to §328.133(e) clarifying that computer recycling facilities must be in compliance with §328.149.

The commission appreciates and agrees in part with this comment. Certain computer-equipment recyclers do have to be in compliance with §328.149. Section 328.133 addresses facilities involved in the collection of used computer equipment for recycling or the recycling of used computer equipment; the commission has added language to §328.133 specifying that those facilities, as applicable, must be in compliance with §328.149.

HP commented that significant questions and possible complications arise due to the addition of mice and keyboards to the definition of "computer equipment." HP raised the question of whether manufacturers who do not manufacture computers but do manufacture keyboards and mice are subject to HB 2714. HP also asked whether a computer manufacturer would have to take back any manufacturer's keyboard and mouse if they accompany the return of the computer manufacturer's computer. HP additionally wondered whether a manufacturer would have to take back a keyboard and mouse even if it is not accompanying a computer.

The commission agrees that additional language would help to avoid possible complications and has changed definition of

"computer equipment" in §328.135(3) to this effect. Manufacturers who do not manufacture computers but do manufacture keyboards and mice are not subject to HB 2714, nor to the adopted rules. A computer manufacturer may, but is not required to, take back any other manufacturer's keyboard and mouse, even if they accompany the return of the computer manufacturer's desktop computer, monitor, or laptop. A computer manufacturer will have to take back their own brand's or brands' keyboard and mouse accompanying the return of the computer manufacturer's desktop computer, monitor, or laptop. A computer manufacturer may, but are not required to, take back their own brand's or brands' keyboard or mouse, unless they accompany that computer manufacturer's desktop computer, monitor, or laptop.

The TCE recommended requiring that with each computer returned manufacturers accept at a minimum one keyboard and mouse, of any brand.

The commission respectfully disagrees with this suggestion. As explained in the response to the previous comment about this, a manufacturer will be required to accept with each desktop computer, laptop computer, or monitor one keyboard and mouse of the manufacturer's own brand(s). No changes have been made in response to this comment.

The TCE also recommended that manufacturers be required to accept any returned keyboard or mouse of their brand from any Texas citizen.

The commission respectfully disagrees with this comment. A manufacturer will only be required to collect keyboards and mice of its own brand(s) that accompany a desktop computer, laptop computer, or monitor of that manufacturer's brand(s). No changes have been made in response to this comment.

Dell and AEA suggested adding two definitions, one for "desktop computer" and one for "laptop computer," or "notebook computer."

The commission agrees with these suggestions and has added these definitions verbatim as suggested by the commenters to the adopted rule, except that the definition for "notebook computer" includes one more synonym than the AEA suggested. The synonym "tablet computer" is in Dell's suggested definition of "notebook computer" but is not included in the AEA's definition.

ITIC also suggested adding definitions for "desktop computer" and "notebook computer." Additionally, ITIC suggested defining a "computer" as a desktop or notebook computer.

The commission agrees with the latter suggestion and has changed the definition of "computer" accordingly. Although the definitions offered by ITIC contained all of the text of the definitions suggested by Dell and the AEA, the definitions also contained extensive specifics that the commission thinks are more technologically detailed than necessary for these rules. The commission has not integrated into the rule in their entirety the definitions suggested by ITIC.

Dell suggested adding definitions for "recycling" and "reuse" of computer equipment, and suggested

specific language compiled from other states' programs.

The commission appreciates this comment and in response has added, in the definitions section of the rule, a reference to the already existing definition of "recycling" in 30 TAC Chapter 330. Also, the commission has added a definition of "reuse." However, the definitions are of "recycling" and "reuse" in general, not definitions of the recycling and reuse of computer equipment in particular. The commission wants to be consistent with the already existing definition of recycling, and the meaning of reuse is not exclusive to computer reuse.

Dell commented that the proposed definition of "retailer" should be further narrowed to apply solely to direct, non-wholesale sales, and suggested a specific addition to the definition of "retailer."

The commission appreciates this comment. However, Senator Watson, the sponsor of the bill, suggested the definition of retailer that was in the proposed rule, and so the proposed definition would seem to best reflect the intent of HB 2714. No changes have been made in response to these comments.

Dell commented that although the definition of "television" follows HB 2714's language, televisions "receive," but do not and cannot, "broadcast."

The commission agrees with this comment and has changed the definition of "television" accordingly.

Dell commented that the definition of "tuner" is appropriate.

The commission agrees with this comment and has left the definition of "tuner" unchanged in response.

Dell commented that they are in agreement with the commission's use of the phrase, "used computer equipment," instead of "computer equipment that has reached the end of its useful life."

The commission appreciates this comment and has made no changes in response.

Dell suggested that, in §328.137(b)(2), the commission replace the term, "manufacturer's computer equipment," with the term, "computer equipment labeled with the manufacturer's brand(s)."

The commission agrees with this suggestion and has changed the adopted rule accordingly.

HP commented that §328.139(c) should be revised to make clear that it does not mean that a retailer that is also a manufacturer is not required to collect its computer equipment.

The commission agrees with this comment and has added language to §328.139(c) to this effect. The commission has also clarified that a retailer that is also a manufacturer is not required to collect its computer equipment at its retail outlets.

The TCE, Mayor Evans, Mr. Rodríguez, Judge Sumter, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, Mayor Swan, Mayor Magers, DonateIT, LLC, the City of Houston, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and two individuals commented that the rules should include an approval process for recycling plans. The TCE commented that a specific timeline for this approval process should be included in the rule-making. Dell commented that they agree that the proposed rule accurately reflects the legislature's intent that the TCEQ does not have the authority to approve or deny a recovery plan. The City

of Houston echoed this sentiment by commenting that ". . . these manufacturer-created plans are not subject to any sort of approval process. . . ."

The commission respectfully disagrees with these comments. The adopted rules include an approval process for "recycling" plans (called "recovery" plans in HB 2714 and the adopted rules) implicitly. The TCEQ is required to post an online list of manufacturers with recovery plans. The TCEQ does effectively have the authority to approve or deny a recovery plan. The TCEQ will have to assess whether recovery plans are in accordance with the law to carry out the TCEQ's duty to post an online list of manufacturers with recovery plans. The TCEQ will put on that list only manufacturers whose recovery plans the TCEQ has ensured are in accordance with the law. HB 2714 does not require the commission to have a timeline for any approval process. No changes have been made in response to these comments.

The TCE commented that they think it is imperative that rules ". . . contain minimum standards for commission approval of manufacturers' recovery plans. . ." and that ". . . mere submission of a recovery plan does not constitute a determination by the commission that the manufacturer's recovery plan or actual practices are in compliance with this rule or other law. {TCE} believe{s} that the statute does require the commission to make this determination and that the rules should reflect it."

The commission agrees in part with these comments. The rules do contain minimum standards for a recovery plan to be acceptable for the commission's Web list of manufacturers with recovery plans. The commission agrees that the mere submission of a recovery plan does not constitute a determination by the commission that the manufacturer's recovery plan or actual practices are in compliance with this rule or other law. However, in determining whether a manufacturer's plan is in accordance with the rules, the TCEQ respectfully disagrees that the manufacturer's practices must be evaluated against these rules or other law. HB 2714 does not require this and thus neither do the adopted rules. No changes have been made in response to these comments.

Similarly, Mr. Rodríguez and Judge Sumter commented that "the bill . . . stipulates that the TCEQ determine whether {the recovery} plans are in compliance with the law," because of the following provision:

"Information . . . on a manufacturer's publicly available Internet site does not constitute a determination by the commission that a manufacturer's recovery plan or actual practices are in compliance."

The commission respectfully disagrees with this comment. This language means that a manufacturer's listing recycling information on its Web site does not equate to the TCEQ having determined that the manufacturer's plan or actions are in accordance with the law. As previously explained, THSC, §361.956(a), requires the TCEQ to post a list of manufacturers with recovery plans. The TCEQ will not put a manufacturer on that list without ensuring that the manufacturer's recovery plan is in accordance with the law. The adopted rule includes language in §328.137(b) requiring that recovery plans include what the bill requires them to include. No changes have been made in response to this comment.

Dell commented that they appreciate the TCEQ proposing a simple and informative format for manufacturers to use for sending the TCEQ their recovery plans and notifying the TCEQ of their compliant collection programs.

The TCEQ appreciates this comment and has made no changes in response.

Dell suggested adding language to §328.137(g) stating that listing by the TCEQ of a manufacturer's recovery plan (or a link to that plan) does not constitute compliance by the manufacturer.

The commission agrees with this comment and has added language to this effect in §328.141(g) instead of in the section suggested by Dell.

The TCE suggested having manufacturers include in their recovery plans a specific baseline amount of computer equipment recovered, by weight in tons, in a given, recent year no earlier than the year 2000.

The TCEQ respectfully disagrees with this suggestion. HB 2714 does not require manufacturers to include in their recovery plans, as a baseline, tons of computer equipment recovered. Manufacturers will be required to include the weight of computer equipment collected, recycled, and reused in the annual reports required by HB 2714 and the adopted rules. No changes have been made in response to these comments.

Representative Bonnen commented that ". . . the rule should not prescribe details about how manufacturers are to collect and recover computers, when and where collection events should be held, etc." Dell made a comment with the same meaning. Senator Watson commented that "As an author and sponsor of this legislation, it was my goal to create a flexible statutory framework that would encourage creativity and innovation for the computer recycling industry. It is not my intent to restrict how manufacturers go about recycling their equipment. I believe the industry will have good ideas on how to do this in the most efficient, least costly manner - while still achieving the intent of the legislation. I would encourage the agency to adopt rules accordingly."

The commission agrees with these comments. The rules do not prescribe such details or restrictions. No changes have been made in response to these comments.

Dell suggested language to make it explicit that the list of examples of collection methods that alone or combined meet the convenience requirements of §328.137 is not an exclusive list.

The commission appreciates this comment. In the proposed language, the commission understood that it was implicit that the list was not exclusive because it was introduced by the phrase, "Examples of collection methods that alone or combined meet the convenience requirements of this section include:." To clarify the non-exclusive nature of this list, language has been added in §328.137(c) to that effect.

Dell suggested that the commission develop and issue guidance, by June 1, 2008, on appropriately convenient collection methods, and that the commission promote the guidance through manufacturer and consumer education and apply the guidance in determining manufacturer compliance with the subchapter.

The commission appreciates these suggestions. However, guidance does not have the force of rule. If the commission wrote guidance on convenience, the commission could not apply the guidance in determining manufacturer compliance with the subchapter. The author of HB 2714, Representative Bonnen, has requested, in written comments that specifics on convenience not be included in the rule and that "{w}ith a few years of collection data in hand, we can see how successful we have been and make changes, if necessary." The commission will consider placing links on its Web site to how other states have defined con-

venient collection of computer equipment to provide examples of how a computer manufacturer might meet the convenience requirements of the rules. No changes have been made in response to this comment.

Mr. Rodríguez, DonateIT LLC, Mayor Evans, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, an individual, and Judge Sumter commented that the bill requires producers to submit a recovery plan to the TCEQ that provides "reasonably convenient" recycling. Mayor Evans, Mayor Magers, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals commented, regarding the recovery plans, that "there must be criteria by which to judge convenience and staff time allocated to see if the plans and programs measure up to that standard." The TCE and an individual commented that requirements that the recycling plan be convenient and free should be enforced during the approval process.

The commission respectfully disagrees with these comments. HB 2714 requires collection of computer equipment to be convenient, not recovery plans. HB 2714 does not require plans to cover or provide reasonably convenient recycling or to have criteria by which to judge convenience. Additionally, implementing such criteria would be possibly constraining, since the only statutory standards for convenience are offered as examples of methods that would meet the convenience requirements of the statute. This leaves open many other ways to meet the convenience requirements of the statute. The flexibility of meeting the convenience requirements of the rules will allow manufacturers to establish the most cost-effective means of meeting recycling requirements. No changes have been made in response to this comment.

The TCE suggested the recovery plans include some additional things, such as manufacturer goals for how much computer equipment they plan to collect and how they are meeting them on a year-to-year basis.

The commission respectfully disagrees with these suggestions. HB 2714 does not grant the commission the authority to require manufacturers to include these things in the recovery plans. No changes have been made in response to these suggestions.

The TCE, Mr. Rodríguez, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, and Judge Sumter commented that the TCEQ rules should be changed to ensure recycling programs are actually convenient for consumers in Texas.

The commission respectfully disagrees with this comment. The adopted rules require that collection of computer equipment be convenient for consumers in Texas. Under HB 2714 and the adopted rules, ensuring that the collection of computer equipment actually is convenient for consumers will be a matter of enforcement by the commission and attorney general. The commission is authorized under HB 2714 and the adopted rules to conduct audits and inspections to determine compliance with this subchapter and to levy penalties for noncompliance. Consumers and consumer groups will be able to file complaints with the TCEQ's regional offices if they judge the collection of computer equipment to not actually be convenient. No changes have been made in response to this comment.

Mayor Evans, the City of Houston, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and two individuals commented that the approval process for recovery plans must or should "guarantee that the goals of the law are met."

The commission respectfully disagrees with this comment. What HB 2714 requires recovery plans to cover is minimal compared with what it requires overall. The rest of the requirements in the law, combined with the approval process for recovery plans, will help ensure the goals of the law are met. No changes have been made in response to this comment.

The TCE, Mr. Rodríguez, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, and Judge Sumter commented ". . . the proposed rules allow the manufacturers simply to declare that their recycling {i.e. recovery} plans are compliant."

The commission respectfully disagrees with this comment. The adopted rules require that, in order to sell computers in Texas, a manufacturer declare that its collection program (not recovery plan) is in compliance. The TCEQ will review a manufacturer's recovery plan to make sure it is in accordance with the law before the TCEQ places that manufacturer on the TCEQ's list of manufacturers with recovery plans. No changes have been made in response to this comment.

An individual commented that TCEQ needs to clearly define what a compliant collection program would be and reject any programs that fail to meet that definition.

The commission respectfully disagrees with this comment. The proposed rules made it clear what a compliant collection program would be: a collection program in compliance with the rules. And, as previously explained, the process is that the TCEQ will implement is to make sure that a recovery plan is in accordance with the law before the commission puts the manufacturer on its Internet list of manufacturers with recovery plans. HB 2714 does not give the commission the authority to approve or reject collection programs. No changes have been made in response to this comment.

The TCE commented that the rules need to spell out a process for removing plans from the list of compliant recycling plans that are not convenient for consumers to use.

The commission respectfully disagrees with this comment. HB 2714 stipulates that the TCEQ have a list, on its Web site, of manufacturers that have submitted recovery plans and registered a compliant collection program. HB 2714 does not give the commission the authority to remove manufacturers from the list if their collection programs are not convenient. No changes have been made in response to this comment.

The TCE commented in favor of a scalable system that will allow manufacturers to adjust the magnitude of the recovery programs based on their annual production volumes.

The commission appreciates this comment. The commission believes that the adopted rules allow manufacturers to develop such systems by mirroring the latitude that HB 2714 affords manufacturers in the development of their collection programs. By not mandating the magnitude of collection programs, HB 2714 and the adopted rules allow manufacturers to adjust their programs as needed. No changes have been made in response to this comment.

Dell commented that they agreed that it is appropriate for a manufacturer to identify all its brands, those in use and those no longer in use, on its publicly available Internet site, in order to better inform consumers and the TCEQ about how and where to recover those products.

The commission appreciates this comment and has made no changes in response.

Dell commented that they believe that TCEQ has appropriately clarified the issue of whether TCEQ must have two different manufacturers' lists, by proposing to prepare a single list of those manufacturers that have both notified TCEQ they have a compliant collection program and submitted their recovery plan to TCEQ.

The TCEQ appreciates this comment and has made no changes in response to it.

Representative Bonnen commented that the ". . . lengthy {manufacturer} certification in the proposal looks unworkable . . ." and suggested a "much clearer, more concise approach."

The commission appreciates this comment. The commission has changed §328.137(g)(2), the section on certification, accordingly.

Similarly, Dell commented that the compliance certification requirement found in §328.137(h)(2) of the proposed rules (found in §328.137(g)(2) of the adopted rules) is far more onerous than the legislature envisioned, and does not work. Dell expressed concern regarding a manufacturer's ability to certify the accuracy and completeness of all documentation submitted to the commission, and compliance with all federal, state, and local laws. Dell also expressed concern about the length of the certification itself. Dell suggested alternative rule language.

The commission agrees in part with these comments. HB 2714 requires manufacturers to provide the commission with documentation verifying that computer equipment is collected, recycled, and reused in a manner that complies with federal, state, and local law. The adopted rules achieve this purpose. Dell's remaining concerns are addressed in the commission's response to Representative Bonnen's comments.

Mr. Rodríguez and Judge Sumter commented that under the proposed rules, manufacturers ". . . would simply sign a statement that the equipment 'has been recycled or reused in a manner that complies with federal, state, and local law.'"

The commission respectfully disagrees with this comment. The commission notes that falsifying this statement could lead to fines and imprisonment. Secondly, the act of signing is the least of this requirement. The most important part of this requirement is the verification that manufacturers will have to perform in order to be in a position to honestly sign the statement. No changes have been made in response to this comment.

Mr. Rodríguez and Judge Sumter commented that ". . . the proposed rules would make compliance with these {the ISRI} recycling standards purely voluntary." The TCE commented that they feel very strongly that defining the ISRI standards as voluntary, as is stated in the ISRI standards' "Purpose" statement, would cripple the entire program. Waste Management Recycle America suggested the commission "set strong standards for Environmental {sic} Sound Management equal to ISRI's recycler's standards adopted in 2006."

The commission appreciates these comments. At public agenda on April 2, 2008, the commission directed staff to propose portions of the ISRI standards as mandatory. The commission has made changes to §328.149, incorporating portions of the ISRI standards, regarding best practices, record-keeping, and the protection of the environment from hazardous substances, as mandatory. The commission has not adopted mandatory standards regarding export and OSHA, for example, due to the TCEQ's lack of authority to enforce them. The commission has not adopted other standards as mandatory, for example, insurance, due to the standard's potential financial impact on computer-equipment recyclers that are small businesses. There is a more thorough discussion of what ISRI standards the commission is not adopting as mandatory in the Section by Section Discussion in this preamble.

Mayor Evans, Mayor Magers, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and several individuals commented that the "TCEQ rules must ensure collected e-waste is handled responsibly" by adopting "the standards of the Electronics Recyclers Pledge of True Stewardship. . . ." Furthermore, Mr. Rodríguez and Judge Sumter commented that the TCEQ should enforce the standards of the Electronics Recyclers Pledge of True Stewardship as mandatory. Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, and Commissioner Gómez commented that the ". . . TCEQ rules should be changed to adopt the Electronics Recycler's Pledge of True Stewardship for the manufacturers programs in addition to the ISRI standard and enforce both standards as mandatory." The TCE and DonateIT LLC commented they would like to see the use of the Electronics Recycler's Pledge of True Stewardship.

The commission respectfully disagrees with these suggestions. The commission acknowledges that it has discretion, under the statute, to adopt a recycling standard other than the ISRI standards. However, in fashioning HB 2714, the legislature looked at various standards for recycling and singled out the ISRI standards as meeting the intent of the legislation. The commission feels obligated to uphold that legislative determination in the ab-

sence of standards from a comparable nationally recognized organization. Regarding the suggestion to adopt both standards, HB 2714 does not authorize the commission to adopt more than one standard. No changes have been made in response to these comments.

The TCE commented that the executive director should not be given sole authority to reject, accept, or adopt federal standards, and that such decisions should lie with the commission.

The commission agrees with this comment. The commission has changed §328.149 to give the commission, not the executive director, the authority to replace the ISRI standards with EPA standards. The commission has also changed §328.149 to: 1) remove the proposed option of automatic adoption, by this rule, of EPA standards that may in the future be deemed by the commission to be an acceptable substitute and 2) make explicit the authority the commission has to, by rule, revoke the ISRI standards and adopt EPA standards that may in the future be deemed by the commission to be an acceptable substitute for the ISRI standards.

At the April 2, 2008, commissioners' agenda meeting, the Texas Campaign for the Environment commented that the rules should make the EPA's "Plug-In To eCycling: Guidelines for Materials Managements" mandatory.

The commission respectfully disagrees with this comment. The commission has chosen to adopt standards in "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Inc., April 25, 2006, as mandatory. However, the commission encourages computer-equipment manufacturers to voluntarily participate in EPA's Plug-In To eCycling Campaign by becoming Plug-In partners and following the Plug-In To eCycling Guidelines for Materials Management.

The TCE, Mayor Evans, Mr. Rodríguez, Judge Sumter, Mayor Magers, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and two individuals commented that TCEQ should provide rules that require manufacturer plans to address the household and home-office e-waste that is received by local governments. Similarly, the TCE, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, and Commissioner Gómez commented that the ". . . TCEQ should establish rules that explicitly require manufacturer recovery plans to address the option of recovering household and home office e-waste through local waste and recycling programs."

The commission respectfully disagrees with these comments. The TCEQ recognizes the merit of the suggestions; however, these suggestions are not sanctioned in the scope of the legislation. The bill requires manufacturers to offer free recycling to consumers, who are defined as individuals who use computer equipment that is purchased primarily for personal or home business use (THSC, §361.952). Notably, HB 2714 and the adopted rules explicitly allow manufacturers to make use of existing collection and consolidation infrastructure for handling used computer equipment. Manufacturers are allowed to meet the recycling requirements of the statute and rules in the most cost-effective means possible. For a manufacturer, this may mean reaching agreements with one or more local governments to recycle some, most, or all computers collected by those local governments. For a local government, this may mean reaching agreements with one or more manufacturers to recycle computers collected by the local government in a manner most workable for the local government. No changes have been made as a result of these comments.

The City of Houston commented that "{t}he proposed rules should clarify that programs operated by local governments are 'other suitable operations' as contemplated in §328.137(e). Additionally, the TCEQ should provide guidance that clarifies the interplay between manufacturer-proposed recycling plans and existing municipal collection programs." Councilwoman Koop commented that the TCEQ should "{p}rovide the opportunity for local governments to continue to collect used units (via existing E-waste Collection Events). . . ."

The commission appreciates the first comment and has clarified that local governments are other suitable options under what now, in the adopted rule, is §328.137(d). The TCEQ offers the following guidance to clarify the interplay between manufacturer-proposed recycling plans and existing municipal collection programs: These rules allow a manufacturer to include existing municipal collection programs in its collection program. These rules allow a municipality to continue to collect computer equipment as before. The nature of the interplay between a manufacturer's recovery plan and an existing municipal collection program is a matter between manufacturers and municipalities, to be agreed upon between them.

The TCE, Mayor Evans, Mayor Swan, Mayor Magers, the City of Houston, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals asked that the commission "provide the opportunity for local governments and others to give input on the law's implementation," by, for instance, including in the rules a "standard method for local governments and other stakeholders to provide 'satisfaction Reports' to the TCEQ on the implementation of the law." Furthermore, the TCE, Mayor Evans, Mayor Swan, Mayor Magers, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals suggested that a summary of this feedback be incorporated into the Annual Report the TCEQ will provide the legislature. The TCE urged the commission to include a "Comment" section on the TCEQ Web page that will be the central information source for this program.

The commission appreciates these suggestions. The commission welcomes any input on the implementation of the law at any time and will gladly provide feedback to the legislature regarding any aspect of the implementation upon the request of the legislature. However, the statute does not require the TCEQ to accept input in the manner suggested, nor to include that input in the TCEQ's report to the legislature. The commission will consider including a "comments" section on its future Web page on computer equipment recycling. No changes have been made in response to these comments.

The TCE urged the commission to have a staffed, toll-free phone line available to consumers to answer questions and identify computer recycling options in their area.

The commission appreciates this comment. The commission does offer and will continue to offer a free website for consumers to identify computer recycling options in their area. The Web site is www.recycletexasonline.org. A toll-free, nationally available phone number for this purpose is 1-800-CLEANUP. Additionally, consumers can find similar information at 1-800-CLEANUP's companion website, www.cleanup.org. The commission will consider having a toll-free phone line available to consumers to answer questions, although HB 2714 does not require this. Although consumers are welcome to call their local TCEQ office with questions, they should be better served by calling the manufacturer of their brand of computer, as manufacturers are responsible for their collection programs and should be better able to answer questions regarding those programs. No changes have been made in response to these comments.

The TCE, Mayor Evans, Mayor Magers, Mr. Rodríguez, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, Mayor Swan, Judge Sumter, DonateIT, LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals commented that if "federal legislation is passed that is weaker than the Texas law, the TCEQ must uphold our stronger standards." Over 30 individuals asked the commission to defend HB 2714 from any attempts at the federal level to undermine bills passed by Texas and other states.

The commission respectfully disagrees with these comments. THSC, Chapter 361, Subchapter Y, authorizes the TCEQ to adopt an agency statement that interprets a federal law as preemptive of the subchapter if the commission determines that the federal law substantially meets the purposes of the subchapter. "Substantially meets" is not as stringent as "is as strong as." No changes have been made in response to this comment.

The TCE, Mayor Evans, Judge Sumter, DonateIT, LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals also requested that if the TCEQ did adopt federal legislation to preempt Texas law, the TCEQ should be required to determine whether a federal law "substantially meets the purposes" of free and convenient producer take-back requirements and environmentally responsible recycling.

The commission agrees with this comment. The impetus of this comment is required by HB 2714 and is implicit in the adopted rule. No changes have been made in response to the comment.

Regarding this same issue, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, and Commissioner Gómez commented that the ". . . TCEQ rules should provide guidance on the meaning of 'substantially meets the purposes' to ensure that there is no erosion of the legislative intent to provide both free and convenient producer take-back requirements and environmentally responsible recycling."

The commission appreciates this comment. However, if the commission evaluated whether a federal law substantially met the purposes of Subchapter I of Chapter 328, the commission would decide, with public comment, the meaning of "substantially meets the purposes." No changes have been made in response to this comment.

Representative Bonnen commented that "{s}everal provisions in the law spell out the TCEQ's responsibilities. The rules also should include each of those provisions, so it is easier for the public, manufacturers, and even agency staff to know the full extent of the agency's role in implementing this law." The TCE echoed this sentiment.

The commission agrees with this comment. The commission has included in the adopted rule each of the provisions in HB 2714 that spell out the commission's responsibilities.

Dell echoed Representative Bonnen's comments on including TCEQ duties in the rule and suggested some additions to the TCEQ's legislatively mandated duties.

The commission appreciates these suggestions. Again, the TCEQ has included all of its legislatively mandated duties in the rule. However, the commission has chosen to limit the TCEQ duties listed in the rule to those listed in HB 2714.

Dell commented that they agree with the commission's proposed language for adopting the ISRI standards while allowing the TCEQ to adopt EPA standards later if they are developed and considered appropriate. Dell also commented that if the TCEQ adopted EPA standards, they would be the law and not voluntary.

The commission appreciates these comments. The commission has made changes to the proposed rule language in response to these and other comments, to adopt ISRI standards as mandatory. If the TCEQ adopted EPA standards to replace the ISRI standards, the commission would decide, with public comment, how to apply and implement those standards. No changes have been made in response to these comments.

Mayor Swan, Mayor Evans, DonateIT, LLC, Mayor Magers, the City of Houston, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek

Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and three individuals commented on the TCEQ's legislated public education efforts. Mayor Evans, Mayor Magers, DonateIT, LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and two individuals urged the commission to increase its commitment to public education and look into creative ways for collaboration between state and local governments as well as Councils of Government. Councilwoman Koop commented, "{b}y combining forces, we could create a vibrant public education effort." On the same subject, an individual commented that the only way to effectively get the message to the general public was through a "TV station such as Discovery Channel." The TCE suggested the TCEQ make available, at least electronically, program materials about recycling computer equipment, to include fact sheets, fliers, pamphlets, camera-ready logos, and/or others. Waste Management Recycle America commented that the commission should include a public relations program that will not only inform Texas citizens of their obligations under this bill, but also teach them why it is important to recycle their used electronics. Another individual commented that it would be beneficial if information about the computer-equipment recycling program could be included with people's electric and/or gas bills.

The commission appreciates these comments. The commission will implement practices to fulfill its public education mandate under HB 2714 and in doing so is open to looking into creative ways for collaboration between state and local governments as well as councils of government (COG). The commission will use multiple methods to fulfill the public education mandate and will consider television, fact sheets, fliers, pamphlets, camera-ready logos, electric bills, gas bills, and other means, as options. The educational efforts of the commission will include not only informing Texas citizens of their obligations under this bill, but also teaching them why it is important to recycle their used electronics. No changes have been made in response to these comments.

Similarly, the TCE commented that the TCEQ can help make this program more user-friendly by identifying on the TCEQ Web site which producer is responsible for which brands of computer equipment. That way, a consumer would not have to check multiple manufacturers' Web sites to try to figure out which manufacturer pertains to the brand he or she is trying to recycle.

The commission agrees with this comment. The TCEQ will place such a list on its Web site. No changes have been made in response to this comment.

The TCE also commented that the TCEQ should "provide information for consumers about what options are available for orphan electronics {electronics whose original manufacturers no longer exist and were not bought out by an existing manufacturer}." Waste Recycle America suggested that the commission "include a mechanism to handle orphan electronics." The TCE asked that the commission include a list of brands on its computer-recycling Web page that no longer exist and were not bought out by an existing manufacturer.

The commission appreciates these comments. The commission already provides information for consumers about what options are available for any used electronics, including electronics whose original manufacturers no longer exist and were not bought out by an existing manufacturer, and will continue to do so. Hence, a mechanism does exist for handling electronics whose original manufacturers no longer exist and were not bought out by an existing manufacturer. Although HB 2714 does not require it, the commission will consider putting a list on its Web site of brands that no longer exist and were not bought out by an existing manufacturer. No changes have been made in response to these comments.

The TCE suggested other approaches to deal with electronics whose original manufacturers no longer exist and were not bought out by an existing manufacturer: encouraging more electronics recycling companies to accept all brands of computer equipment; and allowing companies to charge for accepting such computer equipment for recycling.

The commission appreciates these comments. HB 2714 does encourage electronics recycling companies to accept all brands of computer equipment: THSC, §361.965(d) requires the state, in considering bids for a contract for computer equipment, to give special preference to a manufacturer that has a program to recycle the computer equipment of other manufacturers. However, the Texas Comptroller of Public Accounts (comptroller) and the Department of Information Resources implement the statute pertinent to this. Therefore, the TCEQ rules are not the appropriate place to express this encouragement. HB 2714 and the adopted rule, although not explicitly, do allow companies to charge for accepting electronics whose original manufacturers no longer exist and were not bought out by an existing manufacturer. No changes have been made in response to these comments.

The TCE commented that the ". . . TCEQ must devise a plan to let manufacturers know they must have a recovery plan by September 1, 2008, if they plan to continue selling the covered electronic devices in the state." Similarly, Representative Bonnen commented, "I envision that TCEQ, manufacturers, recyclers, communities, and non-profit organizations will work together to educate each other and assist in compliance."

The commission agrees with these comments. The commission will post information on its Web site concerning these rules. Also, the commission will do a mail-out to all the computer manufacturers registered with the comptroller, notifying them of the requirements. In addition, the commission is open to working together with manufacturers, recyclers, communities, and non-profit organizations to notify and educate not only manufacturers, but everyone affected by these rules. No changes have been made in response to these comments.

The TCE commented that the "TCEQ must devise creative ways for collaboration between state and local government and councils of government to receive funding to augment this effort and challenge private stakeholders, including producers, recyclers, retailers, and nonprofit organizations, to create a vibrant public education effort." The TCE suggested some potential sources of funding: tipping fees, hazardous household waste funds used by COG, and Texas Country Cleanup funds from water fees. The TCE additionally commented that a public-education effort is needed that uses, from the Solid Waste Fund, at least two to three million dollars annually and is sustained for at least four to

five years. The TCE suggested that a portion of the funding be used by TCEQ in collaboration with interested parties for costs such as Web-site and materials development, professional services, paid advertising, and other costs. The TCE suggested that the remainder be allocated as grants to municipalities, county governments and COGs for their promotion of computer-equipment recycling in their jurisdictions. The TCE commented that these efforts should include a baseline survey to determine what Texans know about their options for discarding used electronics and a tracking survey to determine the success of the public campaigns.

The commission respectfully disagrees with these comments. HB 2714 does not authorize the TCEQ to fund implementation in any of the suggested ways. No changes have been made in response to these comments.

Dell commented that they did not understand why the penalty assessed against a recycling facility would not be the same $1,000/$2,000 as applies to retailers.

The commission appreciates this comment. The maximum penalty for recycling facilities comes under Texas Water Code, §7.052(c), which limits administrative penalties to a maximum of $10,000 per day. Actual penalties, up to that amount, are calculated according to the Penalty Policy of the Texas Commission on Environmental Quality (RG-253, September 2002). Limiting the amount of penalty assessed against a recycling facility in this rulemaking is beyond the scope of HB 2714, and would make penalties assessed against computer-recycling facilities inconsistent with other recycling facilities in Texas. No changes have been made in response to this comment.

One individual suggested the commission "increase penalties/fines on . . . corporations. . . ."

The commission appreciates this suggestion. However, the dollar amounts of the penalties the commission can levy under these rules are in statute. The commission is not authorized to increase them. No changes have been made in response to this comment.

One individual asked, "Would printers be considered a '. . . other display device that does not contain a tuner?'" The same individual also asked, "Would the Computer Recovery Plan not cover scanners, notebook docking stations, fingerprint scanners, card readers, speakers, joysticks, or game controllers?"

Printers would not be considered an "other display device that does not contain a tuner." Likewise, neither the recovery plan nor any of these rules applies to scanners, notebook docking stations, fingerprint scanners, card readers, speakers, joysticks, or game controllers. No changes have been made in response to this comment.

Several individuals and Waste Management Recycle America commented that the rules should require television manufacturers to recycle televisions.

The commission appreciates this comment. However, HB 2714 does not grant the TCEQ the authority to require television manufacturers to recycle televisions. No changes have been made in response to this comment.

Similarly, several individuals suggested that the rule's coverage be expanded to include more or all electronics.

The commission appreciates these comments. However, HB 2714 does not grant the TCEQ the authority to require the manufacturers of electronics to recycle electronics other than computer equipment. No changes have been made in response to this comment.

Several individuals requested that computer recycling under these rules be free.

The commission appreciates this comment. However, HB 2714 stipulates that the recycling of computer equipment be free at the time of recycling. This means manufacturers may charge a fee for recycling in the original price of computer equipment. No changes have been made in response to this comment.

Waste Management Recycle America urged the commission to consider allowing electronics manufacturers to be able to charge for postage when recycling computer electronics by mail, to allow smaller companies to compete more easily. The TCE requested that the rules include a specific clarification that manufacturers cannot charge consumers for returning computer equipment by mail.

The commission appreciates these comments. HB 2714 clearly states that manufacturers must offer recycling to consumers that is free at the time of recycling. If consumers had to pay postage upon recycling computer equipment by mail, the recycling would not be free at the time of recycling. The commission has added language in §328.137(c)(1) to make explicit that if a manufacturer's collection program includes a mail-back option, consumers will not have to pay mailing, shipping, handling, or any other costs related directly to mailing at the time of recycling.

One individual commented that a rebate program should be made available for consumers. The same individual commented that a financial incentive should be provided for persons of low income and persons with disabilities.

The commission appreciates these comments. However, HB 2714 does not give the commission the authority to make a rebate program available to consumers or to provide a financial incentive for persons of low income and persons with disabilities. No changes have been made as a result of these comments.

One individual commented that the commission should monitor existing computer-equipment recycling programs and commend cooperative producers who are exemplary models in the Texas community.

The commission agrees with these comments. The commission will be monitoring computer-equipment recycling programs when receiving the annual reports from manufacturers, which will include certifications of sound environmental management. Also, the commission will respond to any complaints received about computer-equipment recycling programs. Although the commission will have no formal way to commend manufacturers who comply with these rules, the commission recognizes that manufacturers who do comply with these rules will be models worthy of emulating. For those manufacturers, or any entity involved in implementing HB 2714, whose contribution is outstanding, the commission encourages them to apply for a Texas Environmental Excellence Award, which are annual awards of recognition given out by the Governor and the commission. No changes have been made in response to this comment.

One individual urged the commission to create policies and procedures that will insure that it is reasonably easy for consumers to get electronic equipment to recycling centers.

The commission agrees and believes that the policies and procedures that these rules create can and should insure that it is reasonably easy for consumers to get electronic equipment to

recycling centers. No changes have been made in response to this comment.

The TCE commented that the TCEQ needs to set standards for convenience in its rulemaking. The TCE and one individual commented that the goal should be to make it as easy to recycle electronic equipment as it is to buy it. Waste Management Recycle America suggested that the commission set standards for convenience "along the lines of so many collection sites/opportunities within x% of the population." The TCE commented that the rules should require manufacturers that rely on a system of collection sites to have a collection site for every town or county or a certain sized population, or a certain number of sites for every COG area since COGs have some responsibility for solid waste planning. Or, commented the TCE, if a manufacturer relied entirely on a system of collection events, the manufacturer could be required to hold an event in every town or county of a certain size and a certain number in every COG region. The TCE commented that manufacturers should include in their recovery plans whether they have a mail-back program and how much is coming through a mail-back program. The TCE also commented that the rules must clarify that a system in a state the size of Texas needs a variety of sites or events. The TCE specifically suggested that convenience requirements include--for any municipality or county, or in the case of any COG region with no city or county with a population of 10,000 or more--that the jurisdiction host either a physical collection site as described in §328.137(d)(2) or at least two, preferably three, annual, day-long collection events as described in §328.137(d)(3). Two individuals specifically requested computer drop-off locations within ten miles of their respective homes. One individual asked that the commission require manufacturers to provide an at-home pick-up service such that an elderly person would not have to move a computer in order recycle it.

Regarding the use of the general term, "consumer electronics," or "electronic equipment," the commission notes that HB 2714 applies to computer equipment, not all electronics. Concerning the convenience of computer-equipment recycling, HB 2714 does not authorize the commission to require such specific definitions of convenience. To the contrary, HB 2714's definition of convenience is quite broad, allowing flexibility for manufacturers to develop and refine how their collection methods will be convenient. No changes have been made in response to this comment.

The TCE suggested that the rules require more vibrant reporting from manufacturers that breaks out the reuse, the recycling, and the disposal.

The commission appreciates this comment. However, the rules already do require reporting that emulates that suggested by the TCE. Section 328.137(g) requires that manufacturers submit an annual report to the TCEQ including the weight of computer equipment collected, recycled, and reused during the preceding calendar year. HB 2714 does not require disposal to be reported. No changes have been made in response to this comment.

One individual asked that the commission not allow HB 2714 to be "watered down by non-enforcement."

The commission will respond to any complaint filed regarding non-compliance with these rules as it does to any compliant filed regarding non-compliance with any rule. The enforcement of these rules will be treated equally with the enforcement of all other rules. No changes have been made in response to this comment.

One individual commented that some type of tax break or special incentives should be given to companies that follow these rules.

The commission appreciates this comment. Although companies are expected to comply with these rules without being given tax breaks or special incentives, companies may be eligible for tax relief for pollution control equipment under 30 TAC Chapter 17. No changes have been made in response to this comment.

One individual asked why the state cannot work with local municipalities to include TVs and computers with other recyclable items. The same individual suggested the possibility of including some small token tax with the sale of TVs and computers.

The state does work with local municipalities to encourage them to recycle TVs and computers. However, no state law requires this partnership. HB 2714 does not authorize the TCEQ to add a tax to the sale of televisions or computers. No changes have been made in response to this comment.

One individual suggested, in the context of HB 2714, subsidizing businesses to recycle products that will produce items that the U.S. is now importing from other countries.

The commission appreciates this suggestion. However, HB 2714 does not authorize the commission to subsidize any businesses. No changes have been made in response to this comment.

One individual commented that she supported a "producer take-back policy that holds electronics manufacturers responsible for providing recycling for consumers to force companies to manufacture a safer product."

The commission has no authority under HB 2714 to force computer-equipment manufacturers, or electronics manufacturers, to make safer products. No changes have been made in response to this comment.

One individual asked that the commission keep HB 2714 as is with no changes.

The commission decided to write rules, with unanimous stakeholder-group support, because depending solely on the wording in HB 2714 was not the most efficient, effective way to implement HB 2714. No changes have been made in response to this comment.

One individual encouraged the commission to promote proper recycling of electronics with some sort of reward system, or at a minimum some sort of system that is adequately communicated to our citizens.

The commission respectfully disagrees with the first part of this comment. HB 2714 does not authorize the commission to promote the recycling of electronics with some sort of reward system. The commission has not made any changes in response to this comment. Under HB 2714, the commission is responsible for educating the public on computer-equipment recycling, and will promote the proper recycling of computer equipment with a system that is communicated to the citizens of Texas. Although the commission is not responsible under HB 2714 for educating the public on the recycling of all electronics, the commission already does and will continue to do this through its Web pages on used-electronics recycling.

One individual commented that the rules should only allow electronics manufacturers to generate a minimal amount of waste at their assembly plants and have to recycle most of it.

The commission respectfully disagrees with this comment. The commission supports efforts to minimize waste. However, HB 2714 does not authorize the commission to regulate the amount of waste generated by manufacturers at their assembly plants. No changes have been made in response to this comment.

One individual commented that the ". . . recycling of electronic waste in ordinary landfills seems hazardous and should not be allowed. Please continue the efforts to get the practice stopped."

The commission respectfully disagrees with these comments. The commission supports the recycling of used electronics done in accordance with law. The commission is unaware of any current efforts to stop the practice of recycling of used electronics at "ordinary" (municipal solid waste) landfills. HB 2714 does not authorize the commission to ban the recycling of used electronics at municipal solid waste landfills. No changes have been made in response to this comment.

Dell agreed that THSC, §361.954(b)(3) should not be included in the rule, but asked that it be addressed in the preamble. Dell feels that manufacturers that do not sell computer equipment to consumers as defined by the rule should still have the ability to participate in government procurement contracts, even though they would not have a recovery plan in place or notification of that plan on file with the TCEQ. Dell also felt that HB 2714 did not require such manufacturers to recover computer equipment from governments and businesses.

The commission agrees with these comments. HB 2714 does not apply to the sale or lease of computer equipment to an entity (such as a government or business) when the manufacturer and the entity enter into a contract that effectively addresses the collection, recycling, and reuse of used computer equipment. The commission addresses this issue here in the preamble as follows.

Manufacturers that do not sell computer equipment to consumers as defined in the rule can continue to bid on state procurement contracts for computer equipment by certifying that all of their contracts, with all customers, for the sale or lease of computer equipment effectively address the collection, recycling, and reuse of used computer equipment. The commission agrees that in general, HB 2714 does not require manufacturers to recover computer equipment from governments and businesses. HB 2714 does require manufacturers who: 1) do not sell computer equipment to consumers, as defined in the rule; and 2) wish to sell to Texas state governmental entities; to enter into contracts that effectively address the collection, recycling, and reuse of used computer equipment. No changes to the rule were made in response to this comment.

Lenovo was concerned about the law's effect on the sale or licensing of trademarks on personal computers and monitors. Lenovo recently purchased the IBM trademark for a limited period of time. Lenovo was concerned about the law's effect on party obligations and liabilities under existing licensing or sales agreements, but acknowledged that future contracts would have to take HB 2714 into consideration. Lenovo was concerned that the law allowed existing manufacturers who are still doing business in Texas to get out of any obligation to recycle their historic waste by passing their responsibility to licensees. Lenovo wanted the commission to interpret the law to apply only in cases where the original brand owner is no longer in business.

The commission respectfully disagrees with this comment. Legislative intent is embodied in the clear language of the bill. The obligations under the law extend "to all computer equipment bearing that brand regardless of its date of manufacture." The obligations or liabilities of parties to the sale or licensing of a trademark or brand are matters between the parties to that contract. If more than one person has manufactured a particular trademark or brand of computer equipment, any of those persons may assume responsibility for and satisfy the obligations under the law. If none of those persons assumes responsibility for or satisfy the obligations under the law, the commission may consider any of those persons to be liable for enforcement. The commission will not expand on the legislation's language on its intent. No changes have been made in response to these comments.

Dell commented that the TAKINGS IMPACT ASSESSMENT section of the preamble to the proposed rules deviates from the legislature's stated intent in passing HB 2714 by focusing on potential health and safety issues not raised in the bill. Dell comments that these concerns were not identified by the legislature, and that they are not necessary to the TAKINGS IMPACT ASSESSMENT section of the preamble.

The commission respectfully disagrees with this comment. The commission acknowledges one concern addressed by HB 2714 is that many used computers and related display devices can be refurbished and reused. However, HB 2714 also addresses health and safety concerns by removing used electronics from the municipal solid waste stream. The AUTHOR's/SPONSOR's STATEMENT OF INTENT section of the Bill Analysis for HB 2714 reads, "Most electronic equipment contains toxic substances that need to be disposed of properly, but only a small fraction of the e-waste that is generated is recycled. Currently, firms are not held responsible for the e-waste they help to produce. HB 2714 provides for e-waste recycling in a manner that seeks to combine the important principals of manufacturer responsibility, consumer convenience, accountability, transparency, education and enforcement into a simple, effective, and efficient information technology collection and recovery system." (Senate Commission On Natural Resources, Bill Analysis, HB 2714, 80th Legislature, 2007.)

The Private Real Property Rights Preservation Act regulates the takings of real private property by governmental entities (Texas Government Code, §§2007.001 - 2007.045). Actions taken in response to a real and substantial threat to human health and safety, designed to significantly achieve that health and safety purpose, that do not impose a greater burden than is necessary to achieve that health and safety purpose are not considered subject to the Private Real Property Rights Preservation Act (Texas Government Code, §2007.003(b)(13)). Therefore, discussing the proposed rules' impact on human health and safety was appropriate in the TAKINGS IMPACT ASSESSMENT of the preamble. No changes have been made in response to these comments.

Dell commented that §328.137(h) of the proposed rules (found in §328.137(g) of the adopted rules) covers all manufactures subject to Subchapter I. Dell stated that all covered manufacturers should have to submit an annual recycling report, not just those who have submitted a recovery plan. Dell suggested that the proposed language be altered as follows: "Each manufacturer shall submit. . . ."

The commission respectfully disagrees with this comment. Manufacturers subject to Subchapter I are required to both adopt and implement a recovery plan and submit an annual recycling report to the commission. These obligations are not mutually exclusive. Section 328.137(g) of the adopted rules does not limit a manu-

facturer's duty to submit an annual recycling report to the commission in any way. No changes have been made in response to this comment.

Dell commented that the commission should clarify that a violation by a retailer for noncompliance for some or all its inventory should be considered a single violation if the noncompliance is found during a single inspection and covers a discrete period of time.

The commission respectfully disagrees with this comment. The evaluation of violations is already addressed by the Penalty Policy of the Texas Commission on Environmental Quality (RG-253, second revision, September 2002). The number and duration of violations for the purpose of penalty assessment are evaluated in accordance with this policy. No changes have been made in response to these comments.

STATUTORY AUTHORITY

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; and TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC. The new sections are also adopted under Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the THSC, Texas Solid Waste Disposal Act, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste, and THSC, §§361.951 - 361.966 and TWC, §7.052(b-1) and (b-2), as amended by the 80th Legislature, which authorizes the commission to help create a recycling program for used computer equipment.

The adopted new rules implement THSC, §§361.951 - 361.966 and TWC, §7.052(b-1) and (b-2), as amended by the 80th Legislature.

§328.133. Applicability and Effective Date.

(a) The collection, recycling, and reuse provisions of this subchapter:

(1) apply exclusively to computer equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer in this state; and

(2) do not impose any obligation on an owner or operator of a solid waste facility.

(b) This subchapter does not apply to:

(1) a television, any part of a motor vehicle, a personal digital assistant, or a telephone; or

(2) a consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement.

(c) This subchapter applies to the following persons, as defined in §328.135 of this title (relating to Definitions):

(1) manufacturers;

(2) retailers;

(3) consumers; and

(4) recyclers.

(d) The effective date of the enforcement provisions of §328.143(d) or (e) of this title (relating to Enforcement) and of the penalty provisions of §328.153 of this title (relating to Amount of Penalties) and §328.155 of this title (relating to Disposition of Penalty) is September 1, 2008.

(e) Facilities involved, under this subchapter or otherwise, in the collection of used computer equipment for recycling or the recycling of used computer equipment must be in compliance with the following as applicable:

(1) §330.11(e)(2) of this title (relating to Notification Required);

(2) §335.6 of this title (relating to Notification Requirements);

(3) Subchapter A of this chapter (relating to Purpose and General Information); and

(4) §328.149 of this title (relating to Sound Environmental Management).

§328.135. Definitions.

The following terms, when used in this subchapter, have the following meanings.

(1) Brand--The name, symbol, logo, trademark, or other information that identifies a whole product rather than the components of the product.

(2) Computer--A desktop computer or notebook computer.

(3) Computer equipment--A desktop or notebook computer, including a computer monitor or other display device that does not contain a tuner. Computer equipment includes its accompanying keyboard and mouse if the keyboard and mouse are from the same manufacturer as the computer equipment.

(4) Consumer--An individual who uses computer equipment that is purchased primarily for personal or home business use.

(5) Desktop computer--An electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions; not including an automated typewriter or typesetter. A desktop computer has a main unit that is intended to be located in a permanent location, often on a desk or on the floor. A desktop computer is not designed for portability and generally utilizes an external monitor, keyboard, and mouse.

(6) Laptop (or notebook) computer--An electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions; not including a portable handheld calculator, or a portable digital assistant or similar specialized device. A notebook computer has an incorporated video display greater than four inches in size and can be carried as one unit by an individual. A notebook computer is sometimes referred to as laptop computer, or tablet computer.

(7) Manufacturer--A person:

(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(B) who sells or sold computer equipment manufactured by others under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(C) who manufactures or manufactured computer equipment without affixing a label with a brand;

(D) who manufactures or manufactured computer equipment to which the person affixes or affixed a label with a brand that:

(i) the person does not or has not owned; or

(ii) the person is not or was not licensed to use; or

(E) who imports or imported computer equipment manufactured outside the United States into the United States, unless at the time of importation the company or licensee that sells or sold the computer equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

(8) Notebook computer--See laptop computer.

(9) Recycler--A person who owns or operates a collection and processing point for computer equipment purchased by a consumer and intended for recycling.

(10) Recycling--See definition of "recycling" in §330.3 of this title (relating to Definitions).

(11) Retailer--A person who owns or operates a business that sells new computer equipment, including sales through a sales outlet, the Internet, or a catalog, whether or not the seller has a physical presence in this state.

(12) Reuse--The use of a used product or part of a used product, which has been recovered or diverted from the solid waste stream, for its original intended purpose.

(13) Television--Any telecommunication system device that can receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

(14) Tuner--An electronic device or circuit used to select signals at a specific frequency for amplification and conversion to pictures or sound.

§328.137. Manufacturer Responsibilities.

(a) Before a manufacturer may offer computer equipment for sale in this state, the manufacturer shall:

(1) adopt and implement a recovery plan; and

(2) affix a permanent, readily visible label to the computer equipment with the manufacturer's brand(s).

(b) The recovery plan must enable a consumer to recycle computer equipment without paying a separate fee at the time of recycling and must include provisions for:

(1) the manufacturer's collection from a consumer of any used computer equipment labeled with the manufacturer's brand(s);

(2) recycling or reuse of computer equipment collected under paragraph (1) of this subsection, including information for the consumer on how and where to return the computer equipment labeled with the manufacturer's brand(s). This information must include, at a minimum, an Internet link that consumers can access to find out specifically how and where to return the computer equipment labeled with the manufacturer's brand(s). If the Internet link is going to change, the manufacturer shall notify the commission of what the new Internet link will be 30 days in advance; and

(3) collection of computer equipment that is:

(A) reasonably convenient and available to consumers in this state; and

(B) designed to meet the collection needs of consumers in this state.

(c) Examples of collection methods that alone or combined meet the convenience requirements of this section follow. These are merely examples, meaning that other collection methods not mentioned, alone or combined, may meet the convenience requirements of this section:

(1) a system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning computer equipment by mail, without the consumer having to pay any mailing, shipping , handling, or any other cost directly related to mailing;

(2) a system using a physical collection site that the manufacturer or the manufacturer's designee keeps open and staffed and to which the consumer may return computer equipment; and

(3) a system using a collection event held by the manufacturer or the manufacturer's designee at which the consumer may return computer equipment.

(d) Collection services under this section may use existing collection and consolidation infrastructure for handling computer equipment and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations. Other suitable operations include, but are not limited to, local governments.

(e) The manufacturer:

(1) shall include collection, recycling, and reuse information on the manufacturer's publicly available Internet site, including a list of all of the manufacturer's brands both in use and no longer in use;

(2) shall provide to the commission a recovery plan in accordance with subsection (b) of this section and notification that the manufacturer has, or will have by September 1, 2008, a compliant collection program. In order to be eligible for the September 1, 2008 commission's list of manufacturers that have recovery plans and have notified the commission that they have a compliant collection program, a manufacturer must submit its recovery plan and notification no later than July 1, 2008; and

(3) may include collection, recycling, and reuse information in the packaging or in other materials that accompany the manufacturer's computer equipment when the equipment is sold.

(f) Information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the commission that the manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(g) Each manufacturer that has submitted a recovery plan shall submit an annual recycling report to the commission by January 31, 2010, or by January 31 of each year after submitting a recovery plan, that includes:

(1) the weight of computer equipment collected, recycled, and reused during the preceding calendar year; and

(2) documentation verifying the collection, recycling, and reuse of that computer equipment in a manner that complies with §328.149 of this title (relating to Sound Environmental Management) and with §305.128 of this title (relating to Signatories to Reports). The certification required by §305.128(c) of this title must also state either at the beginning or end, "I, {name}, certify under penalty of law that all computer equipment collected by {company name} under 30 TAC Chapter 328, Subchapter I, has been recycled or reused in a manner that complies with federal, state, and local law."

(h) If more than one person is a manufacturer of a certain brand of computer equipment as defined by §328.135 of this title (relating to Definitions), any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this subchapter for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand, the commission may consider any of those persons to be the responsible manufacturer for purposes of this subchapter.

(i) The obligations under this subchapter of a manufacturer who manufactures or manufactured computer equipment, or sells or sold computer equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the computer equipment, extend to all computer equipment bearing that brand regardless of its date of manufacture.

§328.139. Retailer Responsibilities.

(a) A person who is a retailer of computer equipment may not sell or offer to sell new computer equipment in this state unless the equipment is labeled with the manufacturer's brand(s) and the manufacturer is included on the commission's list of manufacturers that have recovery plans and have notified the commission that they have a compliant collection program.

(b) Retailers can go to the commission's Internet site and view all manufacturers that are listed as having recovery plans and having notified the commission that they have a compliant collection program. Computer equipment from manufacturers on that list may be sold in or into the State of Texas.

(c) A retailer is not required to collect computer equipment for recycling or reuse under this subchapter unless the retailer is also a manufacturer as defined by §328.135(7) of this title (relating to Definitions). This does not mean that a retailer who is also a manufacturer has to collect computer equipment at a retail outlet.

§328.141. Consumer Responsibilities and Commission Responsibilities.

(a) A consumer is responsible for any information in any form left on the consumer's computer equipment that is collected, recycled, or reused.

(b) A consumer is encouraged to learn about recommended methods for recycling and reuse of used computer equipment by visiting the commission's and manufacturers' Internet sites.

(c) The commission shall educate consumers regarding the collection, recycling, and reuse of computer equipment.

(d) The commission shall host or designate another person to host an Internet site providing consumers with information about the recycling and reuse of computer equipment, including best management practices and information about, and links to, information on:

(1) manufacturers' collection, recycling, and reuse programs, including manufacturers' recovery plans; and

(2) computer equipment collection events, collection sites, and community computer equipment recycling and reuse programs.

(e) The commission shall enforce this subchapter per §328.143 of this title (relating to Enforcement).

(f) The commission shall compile information from manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each year, starting in 2011.

(g) The following list does not constitute a determination by the commission that the manufacturer's collection program and actual practices are in compliance with this subchapter or other law. The commission shall maintain an online list of manufacturers that:

(1) have recovery plans that comply with §328.137(b) of this title (relating to Manufacturer Responsibilities); and

(2) have notified the commission that they have a compliant collection program.

(h) This subchapter does not authorize the commission to impose a fee, including a recycling fee or registration fee, on a consumer, manufacturer, retailer, or person who recycles or reuses computer equipment.

§328.149. Sound Environmental Management.

(a) All computer equipment collected under this subchapter must be recycled or reused in a manner that complies with federal, state, and local law.

(b) The commission adopts, as standards for recycling or reuse of computer equipment under this subchapter, the following portions of the standards in "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Inc., April 25, 2006. The remaining portions are voluntary unless required by other law. The adopted standards apply to computer equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer in this state and do not impose any obligation on an owner or operator of a solid waste facility. If at any time the United States Environmental Protection Agency (EPA) adopts standards for recycling or reuse of computer equipment that are determined by the commission to be an acceptable substitute, the commission may, by rule, revoke the ISRI standards and adopt the EPA standards.

(1) General requirements for recyclers:

(A) Following all efforts to refurbish or reuse computer equipment, the remaining computer equipment shall be manually dismantled for re-useable components or processed for recycling either in accordance with §328.4(b) of this title (relating to Limitations on Storage of Recyclable Materials) for those facilities subject to and not exempted from that section, or in accordance with the following conditions for those facilities exempt from or not subject to §328.4(b) of this title.

(i) The facility can show that the material is potentially recyclable and has an economically feasible means of being recycled.

(ii) Every six months, the amount of material that is processed for recycling (as defined in §328.2 of this title (relating to Definitions)), or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the six-month period. "Every six months" starts, for a new recycling facility, 180 days after opening; for an existing recycling facility, 180 days after the facility, under this subchapter, starts providing services to a manufacturer. In calculating the percentage or turnover, the percentage requirements shall be applied to each material of the same type.

(B) Recyclers shall only dispose of computer-equipment that cannot be refurbished; reused; or, in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), §330.11(e) of this title (relating to Notification Required) and Subchapter A of this chapter (relating to Purpose and General Information), recycled.

(C) For all transfers of computer equipment intended for recycling, recyclers shall maintain commercial contracts, or equivalent commercial arrangements, that shall include:

(i) computer-equipment quantity and type;

(ii) packaging requirements; and

(iii) recycling methods and specifications.

(D) Recyclers shall maintain records for a minimum of three years; or longer if required by local, state, or federal law; including any of the following which are applicable:

(i) manifests;

(ii) bills of lading;

(iii) waste disposal records; and

(iv) records that document:

(I) if the computer equipment is sent to a facility affiliated with (as defined in §328.2 of this title) the recycler, the facility's location and the condition of the computer equipment (refurbished, reuseable, recyclable, or to be determined); and

(II) if the computer equipment is sent to a facility not affiliated with (as defined in §328.2 of this title) the recycler, the location of the first unaffiliated facility to which the computer equipment is sent and the condition of the computer equipment (refurbished, reuseable, recyclable, or to be determined).

(E) Recyclers shall maintain and possess a written work practice that specifically addresses, at least, the following:

(i) lead;

(ii) mercury;

(iii) beryllium;

(iv) cadmium;

(v) batteries;

(vi) polychlorinated biphenyls; and

(vii) free-flowing fluids such as oils and lubricants.

(F) Recyclers shall ensure that computer equipment is stored and processed in a manner that minimizes the potential release of any hazardous substance into the environment.

(G) Recyclers shall package all computer equipment designated for reuse in a manner that protects against damage and minimizes the potential for releases of hazardous substances during storage and transportation. Recyclers must package all computer equipment designated for processing in a manner that minimizes the potential for releases of hazardous substances during storage and transportation.

(H) The computer-equipment recycling facility shall operate in accordance with the closure and financial-assurance requirements of §328.5 of this title (relating to Reporting and Recordkeeping Requirements), unless exempted under §328.5 of this title.

(2) Manual dismantling and mechanical processing at a computer-equipment recycling facility.

(A) Following all efforts to refurbish or reuse computer equipment, the remaining computer equipment should be dismantled for useable components or commodities; processed for recycling in accordance with the following conditions; or properly disposed of per subsection (b)(1)(B) of this section.

(i) The facility can show that the material is potentially recyclable and has an economically feasible means of being recycled.

(ii) Every six months, the amount of material that is processed for recycling (as defined in §328.2 of this title), or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the six-month period. "Every six months" starts, for a new recycling facility, 180 days after opening; for an existing recycling facility, 180 days after the facility, under this subchapter, starts providing services to a manufacturer. In calculating the percentage of turnover, the percentage requirements shall be applied to each material of the same type.

(B) Recyclers shall have a written, up-to-date plan for responding to and reporting pollutant releases, including accidents, spills, fires, or explosions.

(C) Hazardous waste shall be managed, recycled, and disposed of in accordance with Chapter 335 of this title.

§328.153. Amount of Penalties.

(a) The amount of the penalty assessed against a manufacturer that does not label its computer equipment or adopt and implement a recovery plan as required by §328.137 of this title (relating to Manufacturer Responsibilities), may not exceed $10,000 for the second violation or $25,000 for each subsequent violation.

(b) The amount of penalty assessed against a recycling facility for a violation of this subchapter shall be determined by enforcement protocols established for this subchapter. The amount of the penalty assessed against a recycling facility for a violation of Subchapter A of this chapter (relating to Purpose and General Information) shall be determined by enforcement protocols established for that subchapter.

(c) Except as provided by subsections (a) and (b) of this section, the amount of the penalty assessed against a manufacturer for any other violation of this subchapter may not exceed $1,000 for the second violation or $2,000 for each subsequent violation.

(d) The amount of the penalty assessed against a retailer for a violation of this subchapter may not exceed $1,000 for the second violation or $2,000 for each subsequent violation.

(e) A penalty under this section is in addition to any other penalty that may be assessed for a violation of Texas Health and Safety Code, Chapter 361, Subchapter Y.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety adopts amendments to §4.1, concerning Regulations Governing Hazardous Materials, without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2668).

Adoption of amendments to §4.1 is necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through April 1, 2008.

On April 10, 2008, the department held a public hearing to receive comments from all interested persons regarding adoption of the amendments. No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802665
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 11, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 424-2135

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SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11, 4.13 - 4.15, 4.17

The Texas Department of Public Safety adopts amendments to §§4.11, 4.13 - 4.15, and 4.17 concerning Regulations Governing Transportation Safety, without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2670).

Adoption of amendments to §4.11 are necessary in order to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through April 1, 2008; to clarify the rules to ensure that all drivers of commercial motor vehicles are properly qualified to operate these vehicles; to clarify that motor carriers are only subject to these rules when operating a regulated commercial motor vehicle; to clarify that a medical examination certificate can be issued for a period of less than 24 months by a medical examiner; and to correct grammatical errors in the text.

Adoption of amendment to §4.13 are necessary in order to update the text to reflect changes contained in Senate Bill 330, as passed by the 80th Texas Legislature, pertaining to locations where a non-commissioned employee of the department can conduct commercial motor vehicle inspections.

Adoption of amendments to §4.14 are necessary in order to further clarify certain general and date timelines requirements for municipalities and counties participating in the commercial vehicle inspection program.

Adoption of amendments to §4.15 are necessary in order to allow for delivery of safety rating correspondence to a motor carrier at the last known location, address, electronic mail address, or facsimile number for the motor carrier; to clarify that only compliance reviews resulting from a request to change a safety rating where the safety rating has been final for less than 6 months will be processed in accordance with the expedited timelines specified in the rule; to eliminate the term "streamlined compliance review" and replace it with the term "follow-up compliance review"; and to allow the department to extend the final effective date of a safety rating for a motor carrier transporting passengers or hazardous materials for up to 30 days when the motor carrier has submitted evidence of corrective actions.

Adoption of amendments to §4.17 are necessary in order to allow the department to notify motor carriers of claims using electronic mail, provided the department verifies receipt by a responsible individual; and to set the deadline for responding to or appealing a notice of claim at 20 calendar days rather than 20 business days, which is consistent with the requirements of Texas Transportation Code, §644.153(e).

On April 10, 2008, the department held a public hearing to receive comments from all interested persons regarding adoption of the amendments. No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802666
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 11, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 424-2135

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER B. PROHIBITIONS

37 TAC §35.14

The Texas Department of Public Safety adopts the repeal of §35.14, concerning Prohibitions, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2265).

Adoption of the repeal is necessary due to it having been rendered redundant by H.B. 2833, Acts 2007, 80th Leg. R.S. (amending Chapter 1702 of the Occupations Code).

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802663
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 11, 2008
Proposal publication date: March 14, 2008
For further information, please call: (512) 424-2135

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SUBCHAPTER C. STANDARDS

37 TAC §§35.42, 35.43, 35.45

The Texas Department of Public Safety adopts new §§35.42, 35.43, and 35.45, concerning Standards, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2265).

Adoption of new §35.42 is necessary because §1702.113(b) of the Texas Occupations Code was amended to require that the Board establish which Class B misdemeanors are to be disqualifying under that section. The Board is of the opinion that the prohibitive Class B misdemeanors are directly related to the provision of services regulated by the Private Security Act, and that the discretionary offenses may, under certain circumstances, be so related, in that the license may offer the license holder an opportunity to commit further such offenses. In addition, the Board believes that the commission of such offenses raises doubts regarding whether the individual's judgment and character is suited to the provision of regulated services.

Adoption of new §35.43 is necessary because §1702.113(a) of the Texas Occupations Code was amended to require that the Board establish the circumstances under which an "other than honorable discharge" is to be disqualifying under that section. The Board is of the opinion that military discharges under "other than honorable conditions" should be prohibitive when they are based on classified criminal offenses, and that the term of disqualification should track the statutory criteria associated with the level of the offense. For those that are not based on a classifiable offense, the Board believes a ten year term of disqualification is appropriate, based on the various circumstances that can result in such a discharge.

Adoption of new §35.45 is necessary because §1702.113(a) and §1702.3615 of the Texas Occupations Code were amended to require that the Board establish the factors to be considered in determining whether circumstances warrant approval of an application where the application has been denied solely because of the applicant's status as a registered sex offender. The Board is of the opinion that the proposed criteria will enable it to fairly evaluate the applicant's fitness for licensure. The criteria include the age of the applicant at the time of the underlying offense, the classification of the offense, any evidence of rehabilitation or recidivism, the amount of time that has passed, and the relationship between the offense and the occupation for which the individual seeks a license, including whether licensure will facilitate the commission of a similar offense.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2008.

TRD-200802664
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 11, 2008
Proposal publication date: March 14, 2008
For further information, please call: (512) 424-2135

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 423. FIRE SUPPRESSION

The Texas Commission on Fire Protection (the Commission) adopts amendments to Subchapter B, §423.203, Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel, and §423.303, Minimum Standards for Basic Marine Fire Protection Personnel Certification, with changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1275) and will be republished.

The purpose of the adopted amendments is to correct grammatical errors and delete obsolete language referring to part-time certification for aircraft rescue firefighters and part-time certification for marine fire protection personnel. During the Commission meeting held April 10, 2008, it was determined that subsection (b) of §423.203 and §423.303 should also be deleted because the Commission does not issue part-time certifications.

Part-time employees of regulated entities are required to hold at least a basic certification in the discipline they are assigned.

Mr. Soteriou has determined there are no additional costs of compliance for small or large businesses or individuals that are required to comply with these adopted amendments.

Mr. Soteriou has also determined that for each year of the first five years the adopted amendments are in effect, there will be no public benefit anticipated as a result of enforcing these amendments.

No comments were received from the public regarding these proposed amendments.

SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

37 TAC §423.203

These amendments are adopted under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

§423.203. Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification.

In order to obtain a Basic Aircraft Rescue Fire Fighting Personnel Certification the individual must:

(1) hold a Basic Structure Fire Protection Personnel Certification; and

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Airport Fire Fighter; or

(3) complete a Commission-approved aircraft rescue fire suppression training program and successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved aircraft rescue fire suppression training program shall consist of one of the following:

(A) a Commission-approved Basic Aircraft Rescue Fire Suppression Curriculum as specified in Chapter 2 of the Commission's Certification Curriculum Manual.

(B) an out-of-state, and/or military training program that has been submitted to the Commission for evaluation and found to be equivalent to or exceeds the Commission-approved Basic Aircraft Rescue Fire Suppression Curriculum.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2008.

TRD-200802658
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 10, 2008
Proposal publication date: February 15, 2008
For further information, please call: (512) 936-3838

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SUBCHAPTER C. MINIMUM STANDARDS FOR MARINE FIRE PROTECTION PERSONNEL

37 TAC §423.303

These amendments are adopted under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

§423.303. Minimum Standards for Basic Marine Fire Protection Personnel Certification.

In order to obtain a basic Marine Fire Protection Personnel Certification the individual must:

(1) hold a Basic Structure Fire Protection Personnel Certification;

(2) complete a training program specific to marine fire protection consisting of one of the following:

(A) complete the Commission-approved Basic Marine Fire Protection Curriculum as specified in Chapter 3, of the Commission's Certification Curriculum Manual.

(B) An out-of-state, and/or military training program that has been submitted to the Commission for evaluation and found to be equivalent to or exceed the Commission-approved Basic Marine Fire Protection Curriculum.

(3) successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) prior to assignment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2008.

TRD-200802659
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 10, 2008
Proposal publication date: February 15, 2008
For further information, please call: (512) 936-3838

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CHAPTER 449. HEAD OF A FIRE DEPARTMENT

37 TAC §449.1

The Texas Commission on Fire Protection (the Commission) adopts an amendment without changes to Chapter 449, Head of a Department, §449.1, Minimum Standards for the Head of a Fire Department. This amendment is adopted without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1276), and will not be republished.

The purpose of the adopted amendment is to correct grammatical errors and clarify when an individual appointed as head of a department becomes eligible to be certified and the documentation that must be submitted verifying that eligibility.

No comments were received on the proposed amendment.

This amendment is adopted under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2008.

TRD-200802657

Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: June 10, 2008
Proposal publication date: February 15, 2008
For further information, please call: (512) 936-3838

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review 4 Texas Administrative Code Part 1, Chapter 9, concerning Seed Quality; Chapter 10, concerning Seed Certification Standards; Chapter 16, concerning Aquaculture; and Chapter 20, concerning Cotton Pest Control, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of Chapters 9, 10, 16, and 20 by the department at this time indicates that the reason for readopting without changes all sections in these chapters continues to exist.

The department is accepting comment on the review of Chapters 9, 10, 16, and 20. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register*. Comments may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200802728
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: May 23, 2008

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Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.21, concerning the Weapons Policy. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-200802760
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: May 27, 2008

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The Texas Board of Criminal Justice files this notice of intent to review §151.73, concerning Texas Board of Criminal Justice Vehicle Assignments. This review is being conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-200802761
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: May 27, 2008

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The Texas Board of Criminal Justice files this notice of intent to review §152.61, concerning TDCJ Emergency Response to Non-Agent Private Prisons/Jails. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-200802762
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: May 27, 2008

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Texas Department of Savings and Mortgage Lending

Title 7, Part 4

The Finance Commission of Texas files this notice of intention to review and consider for re-adoption, revision or repeal, Texas Administrative Code, Title 7, Part 4:

Savings and Loan Rules:

Chapter 51, §§51.1 - 51.15, relating to Charter Applications;

Chapter 53, §§53.1 - 53.5 and 53.7 - 53.18, relating to Additional Offices;

Chapter 57, §§57.1 - 57.4, relating to Change of Office Location or Name;

Chapter 59, §59.1, relating to Foreign Building and Loan Association;

Chapter 61, §§61.1 - 61.3, relating to Hearings;

Chapter 63, §§63.1 - 63.15, relating to Fees and Charges;

Chapter 64, §§64.1 - 64.10, relating to Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Consumer Complaints;

Chapter 65, §§65.1 - 65.24, relating to Loans and Investments;

Chapter 67, §§67.1 - 67.4 and 67.6 - 67.17, relating to Savings and Deposit Accounts;

Chapter 69, §§69.1 - 69.11, relating to Reorganization, Merger, Consolidation, Acquisition, and Conversion;

Chapter 71, §§71.1 - 71.8, relating to Change of Control;

Chapter 73, §§73.1 - 73.6, relating to Subsidiary Corporations;

Savings Bank Rules:

Chapter 75, relating to Applications:

Subchapter A, §§75.1 - 75.10, relating to Charter Applications;

Subchapter B, §§75.25 - 75.27, relating to Expedited Applications;

Subchapter C, §§75.31 - 75.39 and 75.41, relating to Additional Offices;

Subchapter D, §§75.81 - 75.91, relating to Reorganization, Merger, Consolidation, Conversion, Purchase, and Assumption and Acquisition;

Subchapter E, §§75.121 - 75.127, relating to Change of Control;

Chapter 77, relating to Loans, Investments, Savings, and Deposits:

Subchapter A, §§77.1 - 77.11, 77.31 - 77.33, 77.35, 77.51, 77.71 - 77.74, and 77.91 - 77.96, relating to Authorized Loans and Investments; and

Subchapter B, §§77.101 - 77.104, 77.106 - 77.113, 77.115, and 77.116, relating to Savings and Deposits;

Chapter 79, relating to Miscellaneous:

Subchapter A, §§79.1 - 79.7 and 79.12, relating to Books, Records, Accounting Practices, Financial Statements and Reserves;

Subchapter B, §§79.21 - 79.26, relating to Capital and Capital Obligations;

Subchapter C, §§79.41 - 79.47, relating to Holding Companies;

Subchapter D, §79.61, relating to Foreign Savings Banks;

Subchapter E, §§79.71 - 79.73, relating to Hearings;

Subchapter F, §§79.91 - 79.103 and 79.105 - 79.110, relating to Fees and Charges;

Subchapter G, §79.121, relating to Statements of Policy; and

Subchapter H, §79.122, relating to Consumer Complaints Procedures;

Mortgage Broker Licensing Rules:

Chapter 80, relating to Mortgage Broker and Loan Officer Licensing:

Subchapter A, §§80.1 - 80.7, relating to Licensing;

Subchapter B, §§80.8 - 80.11, relating to Professional Conduct;

Subchapter C, §§80.12 - 80.14, relating to Administration and Records;

Subchapter D, §80.15, relating to Complaints and Investigations;

Subchapter E, §80.16, relating to Hearings and Appeals;

Subchapter F, §80.17, relating to Interpretations;

Subchapter G, §80.18, relating to Enforcement of Liens;

Subchapter H, §80.19, relating to Savings Clause;

Subchapter I, §80.20 and §80.21, relating to Inspections and Investigations;

Subchapter J, §80.22, relating to Forms; and

Subchapter K, §80.23, relating to Annual Reports;

Mortgage Banker Rules:

Chapter 81, §81.1 and §81.2, relating to Mortgage Banker Registration.

The Commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adoption these chapters continue to exist.

The Texas Department of Savings and Mortgage Lending, which administers these rules, believes that the reasons for adopting the rules contained in the chapters continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Caroline C. Jones, Chief Thrift Attorney, Texas Department of Savings and Mortgage Lending, 2601 N. Lamar Boulevard, Suite 201, Austin, Texas 78705-4207, or by e-mail to cjones@sml.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-200802667
Jane M. Black
General Counsel
Texas Department of Savings and Mortgage Lending
Filed: May 22, 2008

State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning June 2008, will review and consider for readoption, revision, or repeal Chapter 115, Securities Dealers and Agents, and Chapter 116, Investment Advisers and Investment Adviser Representatives, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting this chapter continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period

will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-200802668
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: May 22, 2008

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State Seed and Plant Board

Title 4, Part 5

The Texas Department of Agriculture (the department) proposes to review 4 Texas Administrative Code, Part 5, Chapter 81, concerning Certification Procedures, and Chapter 82, concerning Administrative Procedures, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As a part of the review of Chapter 81, the department is proposing the repeal of §81.1, relating to Certification of Seed in Texas. The proposed repeal is published in the Proposed Rules section of this issue of the *Texas Register*. The assessment of Chapters 81 and 82 by the department at this time, indicates that, with the exception of the repeal of §81.1, the reason for readopting without changes all remaining sections in Chapters 81 and 82 continues to exist.

The department is accepting comments on the review of Chapters 81 and 82. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register*. Comments may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200802729
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
State Seed and Plant Board
Filed: May 23, 2008

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Texas Department of Transportation

Title 43, Part 1

In accordance with Texas Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review 43 TAC Part 1, Chapter 21, concerning Right of Way.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-200802693
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: May 22, 2008

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Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice (Board) has completed its review of §152.51, concerning Authorized Witnesses to the Execution of an Inmate Sentenced to Death, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §152.51 continue to exist, and it readopts the section.

Notice of the review was published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2983). Comments were received as a result of that notice, and changes were incorporated into the proposed amended rule.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §152.51 in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2909). The Board adopted the amended rule on May 20, 2008, and the adoption notice will be published in a future issue of the *Texas Register.*

TRD-200802763
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: May 27, 2008

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The Texas Board of Criminal Justice (Board) has completed its review of §159.1, concerning Substance Abuse Felony Punishment Facilities (SAFPF) Eligibility Criteria, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §159.1 continue to exist, and it readopts the section.

Notice of the review was published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2983). No comments were received as a result of that notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §159.1 in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2911). The Board adopted the amended rule on May 20, 2008, and the adoption notice will be published in a future issue of the *Texas Register.*

TRD-200802764
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: May 27, 2008

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The Texas Board of Criminal Justice (Board) has completed its review of §195.51, concerning Sex Offender Supervision.

Notice of the review was published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2557). No comments were received as a result of this notice.

The Board finds that the reasons for initially adopting §195.51 were to ensure consistency in the manner in which sex offenders are supervised while on parole, mandatory supervision and community supervision and that those reasons continue to exist.

The Board readopts the section without changes, in accordance with the requirements of Texas Government Code §2001.039.

TRD-200802765
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: May 27, 2008

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Texas Facilities Commission

Title 1, Part 5

Pursuant to the notice of the proposed rule review published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9735), the Texas Facilities Commission ("Commission") has reviewed and considered for readoption, revision, or repeal Texas Administrative Code, Title 1, Part 5, Chapter 111, Executive Administration Division, in accordance with Texas Government Code §2001.039 (Vernon 2000). The Commission has determined that the reasons for initially adopting Chapter 111, §111.1 and §§111.3 - 111.8. continue to exist. The reason for initially adopting Chapter 111, §111.2 no longer exists. No comments were received on the proposed rule review.

Chapter 111 relates to the executive administration of the Commission, including organization, definitions, protesting agency solicitations and resolving related disputes, establishing agency ethical standards, filing complaints, petitioning the Commission for adoption of rules, negotiating and mediating certain contract disputes, and establishing an agency sick leave pool. During its review, the Commission determined that the business necessity remains in effect for §111.1 and §§111.3 - 111.8. The Commission further determined that amendments are required to reflect current statutory language and for consistency throughout the Chapter. In addition, the Commission found that the following new rules should be proposed: a rule concerning historically underutilized businesses, a rule concerning employee training and education, and a rule concerning the assignment and use of pooled vehicles. The new rules are necessary to comply with statutory rulemaking requirements pursuant to Texas Government Code §656.048(a) (Vernon 2004) (employee training and education), §2161.003 (Vernon 2000) (historically underutilized businesses program), and §2171.1045 (Vernon 2000) (vehicle assignment and use). The business necessity for §111.2, relating to definitions of statewide procurement functions that were transferred to the Comptroller of Public Accounts, no longer exists. The Commission has determined that §111.2 should be repealed. Chapter 111 previously contained a Subchapter B, entitled Historically Underutilized Business Program. Subchapter B was transferred to the Comptroller of Public Accounts on September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237).

The Commission has determined that the transfer of Subchapter B and the statutory requirements for additional rules necessitates a complete reorganization of Chapter 111. The rules should be grouped together by topic and organized under new subchapters. The reorganization is extensive enough to warrant the repeal of Chapter 111.

Through concurrent notices published in the Proposed Rules section in this issue of the *Texas Register*, the Commission proposes the repeal of Chapter 111 and proposes a new Chapter 111.

This completes the Commission's review of Texas Administrative Code, Title 1, Part 5, Chapter 111, Executive Administration Division pursuant to Texas Government Code §2001.039 (Vernon 2000).

TRD-200802671
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 22, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §34.2

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Minor Related Offenses			
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71(a)(12), Alcoholic Beverage Code.	5-7 days $250 per day	20-25 days $500 per day	90-Cancel $500 per day
Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, Alcoholic Beverage Code.	3-5 days $250 per day	10-15 days $250 per day	90-Cancel $500 per day
Sale of an alcoholic beverage to a minor in violation of §106.03, Alcoholic Beverage Code.	5-7 days $500 per day	20-25 days $500 per day	1 year or Cancel $750 per day
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §22.12 and §28.11, Alcoholic Beverage Code.	3-5 days $250 per day	15-20 days $500 per day	30-Cancel $750 per day
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury, death or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09, Alcoholic Beverage Code.	30-40 days $250 per day	Cancel	Cancel
Failure to report a breach of the peace in violation of §11.61(b)(21), §61.71(a)(31), Alcoholic Beverage Code.	3-5 days $150 per day	10-15 days $250 per day	25-Cancel $500 per day
Possession of, sale or delivery of, or permitting the sale or delivery of narcotics by a licensee or permittee or possession of any equipment used or designed for the administering of a narcotic in violation of §104.01, Alcoholic Beverage Code, or 16 TAC §35.41(27).	30-40 days $250 per day	Cancel	Cancel
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, Alcoholic Beverage Code.	5-7 days $500 per day	20-25 days $750 per day	Cancel
The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, Alcoholic Beverage Code.	10-15 days $500 per day	30-40 days $750 per day	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, Alcoholic Beverage Code and commission rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in violation of §104.01(2), Alcoholic Beverage Code.	5-7 days $250 per day	20-25 days $500 per day	Cancel
Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), Alcoholic Beverage Code.	3 days	7-10 days $250 per day	30-40 days $500 per day
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code. Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §§11.61(b)(22), 61.71(a)(18) or 105.06, Alcoholic Beverage Code.	5-7 days $250 per day	20-25 days $750 per day	Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), Alcoholic Beverage Code.	5-7 days $250 per day	20-25 days $500 per day	60-Cancel $750 per day
The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17), Alcoholic Beverage Code by committing the below listed violations. Requires detail on offenses. Examples (not limited to the following offenses): Possession of any gambling paraphernalia or device; Gambling on a licensed premises; Keeping a gambling place; Prostitution; Promotion of prostitution; Employment harmful to a minor; (See §106.15) Obscenity.	 5-7/$250 5-7/$500 5-7/$750 5-7/$250 5-7/$750 5-7/$1,500 5-7/$500	 20-25/$500 25-30/$750 20-25/$1,000 20-25/$750 20-25/$1,000 60-70/$2,000 30-35/$750	 Cancel Cancel Cancel Cancel Cancel Cancel Cancel
Violation of city codes (relating to health, safety and welfare).	3 days	15-20 days $300	30-Cancel $500

Figure: 16 TAC §34.3

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Refusing to allow an inspection of a licensed premises or interfering with an inspection of a licensed premises in violation of §§32.17(a)(2), 61.71(a)(14), 61.74(a)(7) or 101.04, Alcoholic Beverage Code.	10-15 days $250 per day	20-25 days $350 per day	Cancel
Operating an establishment as an illegal open saloon in violation of §32.17(a)(1) or §32.01(2), Alcoholic Beverage Code.	5-7 days $250 per day	10-15 days $500 per day	Cancel
Selling wine over 17% alcohol content during prohibited hours in violation of §24.07, Alcoholic Beverage Code.	3-5 days $250 per day	5-7 days $350 per day	25-30 days $500 per day
Sale of alcoholic beverages while serving a suspension in violation of §§11.68, 61.71(a)(22) or 61.84, Alcoholic Beverage Code.	Original suspension plus 10-15 days $250 per day	Original suspension plus 25-30 days $350 per day	Cancel
Subterfuge--Permitting another person to use a license or permit other than the one it is issued to in violation of §11.05 and §109.53, Alcoholic Beverage Code.	Cancel	N/A	N/A
Possession of distilled spirits without local distributor stamps on the container in violation of §28.15 or §32.20, Alcoholic Beverage Code.	7-10 days $250 per day	15-20 days $500 per day	Cancel
Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72.	3-5 days $250 per day	15-20 days $350 per day	Cancel
Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, Alcoholic Beverage Code and agency rule §41.50.	10-15 days $250 per day	20-25 days $350 per day	Cancel
Knowingly possess uninvoiced alcoholic beverages in violation of §28.06, Alcoholic Beverage Code and agency rule §41.50 or refilling distilled spirits bottles in violation of §28.08, Alcoholic Beverage Code.	Cancel	Cancel	Cancel
Sale of any unauthorized alcoholic beverage in violation of §11.01, Alcoholic Beverage Code.	10-15 days $250 per day	30-40 days $350 per day	Cancel
Possession of any unauthorized alcoholic beverage by a licensee or permittee or his employee in violation of §69.12 or §61.71(a)(9), Alcoholic Beverage Code.	3-5 days $250 per day	10-15 days $350 per day	Cancel
Consumption of or permitting consumption of an alcoholic beverage on the premises of any off-premise license or permit in violation of §§22.10, 22.11, 26.01 or 71.01, Alcoholic Beverage Code.	3-5- days $150 per day	10-15 days $250 per day	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Permitting an open container on the premises of any off-premise license or permit in violation of §71.01 or §24.09, Alcoholic Beverage Code.	3-5 days $150 per day	10-15 days $250 per day	30-40 days $350 per day
Purchase of an alcoholic beverage from an unauthorized source in violation of §§61.71(a)(19), 61.71(a)(20), 69.09 or 71.05, Alcoholic Beverage Code.	7-10 days $250 per day	30-40 days $500 per day	Cancel
Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, Alcoholic Beverage Code.	10-15 days $250 per day	30-40 days $350 per day	Cancel
Purchasing alcoholic beverages while on the "delinquent list" in violation of §102.32(d), Alcoholic Beverage Code.	5-7 days $250 per day	15-20 days $350 per day	Cancel
Selling an alcoholic beverage away from a licensed premises. §61.06	5-7 days $150 per day	10-15 days $250 per day	45-55 days $350 per day
Storage of alcoholic beverages off a licensed premises in violation of §69.10, Alcoholic Beverage Code.	5-7 days $150 per day	10-15 days $250 per day	30-40 days $350 per day
Making false or misleading statements in original or renewal applications or making false or misleading statements in documents submitted with or attached to applications for licenses or permits in violation of §§11.46(4), 61.71(a)(4) or 61.74(a)(11), Alcoholic Beverage Code.	Cancel		
Sale or delivery of unauthorized alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the Alcoholic Beverage Code. §§11.01, 19.01, 61.01 or 62.01	7-10 days $250 per day	30-40 days $500 per day	Cancel
Sale to a permittee who is on the delinquent list, failure to timely collect credit payments, or failure to report credit law violations; Failure to notify the commission of a delinquent account in violation of §102.32, Alcoholic Beverage Code; Failure to report cash law violations or failure to sell beer for cash in violation of §102.31, Alcoholic Beverage Code.	3-5 days $150 per day	10-15 days $250 per day	25-30 days $350 per day
Improper record keeping in violation of agency rules §§41.49 - 41.52 and §32.03, §32.06, Alcoholic Beverage Code, including invoices, membership records, pool and replacement accounts.	3-5 days $150 per day	5-7 days $250 per day	7-10 days $350 per day
Knowingly filed false report, application, form, or record. §§11.61, 61.71, 62.05, 64.04, or 203.09	Cancel		

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Knowingly failed to keep record or file return in manner required. §§61.71, 61.74, 62.05, 64.04, 203.09, or 206.01	5-10 days $350 per day	20-30days $500 per day	Cancel
Retail cash/credit laws violation of cash or credit laws by retail licensee or permittee in violation of §§61.73, 102.31 or 102.32.	2-5 days $150 per day	3-5 days $250 per day	10-15 days $350 per day
Failed to present program curriculum as approved. §50.4(g)	$450-$600	$2,250-$3,000	Cancel
Program taught in ineffective manner. §50.4	$450-$600	$2,250-$3,000	Cancel
Failed to use certified trainer. §50.6(a)	$2,250-$3,000	$4,500-$6,000	Cancel
Had more than 50 trainees in a session. §50.4(e)	$450-$600	$1,500-$2,250	Cancel
Failure to schedule sessions or cancel sessions in a timely manner. §50.4(a)	$450-$600	$1,050-$1,500	$3,000
Failure to properly test. §50.4(j) - (n)	$1,500-$2,250	$4,500-$6,000	Cancel
Certifying a trainee who had not successfully completed a full session and/or passed the final test. §50.5(b)(2)	$450-$600	$1,500-$2,250	$3,000-$4,500
Licensee/Permittee programs certifying non-employees. §50.4(d)	$450-$600	$1,050-$1,500	$3,000-$4,500
Failed to distribute certificates to trainees. §50.4(r)	$450-$600	$1,500-$2,250	$4,500-$6,000
Trainer taught in a language that was not authorized. §50.6(a)	$450-$600	$1,050-$1,500	$3,000-$4,500
Violation of requirements for school/program approval. §50.3(a) - (h)	Cancel		
Violated a provision of §50.5(b) (Program). §50.5(b)	Cancel		
Violated a provision of §50.7 (Trainer). §50.7	Cancel		
Make false or misleading statements, reports, or representations to the Commission. §50.5(b)(2)	$1,500-$2,250	$4,500-$6,000	Cancel
Failure to timely file or properly prepare the report of seller training. §50.5(b)(4)	$750-$1,050	$1,500-$2,250	Cancel
Failure to properly prepare and issue certificates. §50.4(r)	$450-$600	$1,500-$2,250	Cancel

Figure: 16 TAC §34.4

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Penalty amount unless otherwise noted.		$15,000 per day	$25,000 per day
M/W furnish, give or lend money, service or thing of value; equipment, fixtures, or supplies, to a retailer. §102.07(a), §102.15, Alcoholic Beverage Code	1 day $2,000-$4,000 per day	2 days	5 days
M/W pay or make allowance for advertising or distribution service to a retailer. §102.07(a)(6), §108.05, Alcoholic Beverage Code	1 day $2,000-$4,000 per day	2 days	5 days
M/W allow an excessive discount to a retailer. §102.07(a)(7), Alcoholic Beverage Code	3 days $3,000-$5,000 per day	5 days	7 days
M/W offer prize premium, gift or similar inducement to a retailer. §102.07(a)(8), §108.06, Alcoholic Beverage Code	3 days $3,000-$5,000 per day	5 days	7 days
M/W provide advertising specialties exceeding provisions of §102.07, Alcoholic Beverage Code.	1 day $2,000-$4,000 per day	2 days	5 days
M/W offer premium, prize or gift to consumer. Exceeding provisions of §102.07 or §108.06, Alcoholic Beverage Code; or other similar provision.	1 day $2,000-$4,000 per day	2 days	5 days
M/W violate sweepstakes provisions. §102.07(d), §108.061, Alcoholic Beverage Code	3 days $3,000-$5,000 per day	5 days	7 days
M/W violated provisions for pre-arranging or pre-announcing promotional activity at retail accounts. §102.07(g) Alcoholic Beverage Code	5 days $3,000-$5,000 per day	7 days	10 days
M/W engaged in commercial Bribery. §102.12 Alcoholic Beverage Code	10 days $7,000 per day	20 days	Cancel
M/W engaged in exclusive outlet with retailer. §102.13, Alcoholic Beverage Code	10 days $7,000 per day	20 days	Cancel
M/W violates provisions of restocking and rotation at retailer premises. §102.20, Alcoholic Beverage Code	2 days $3,000-$5,000 per day	4 days	7 days
M/W/D violates provisions of territorial agreement. §§102.51 - 102.56, Alcoholic Beverage Code	10 days $7,000 per day	20 days	Cancel
M/W/R violates tied house provisions. §102.01, Alcoholic Beverage Code	10 days $7,000 per day	30 days	60 days
Violate provisions of outdoor advertising. §§108.51 - 108.56, Alcoholic Beverage Code	1 day $2,000-$4,000 per day	2 days	5 days
Retailer accepts unlawful benefit. §104.03, Alcoholic Beverage Code	15 days $7,000 per day	20 days	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
M/W conspires w/other to compromise independence of retailer (Public Entertainment Facility Law). §§108.71 - 108.81, Alcoholic Beverage Code	5 days $3,000-$5,000 per day	7 days	15 days
M/W/Retailer offer coupon, rebate, premium stamp, or other inducement with or for purchase of alcoholic beverages. §102.07(d), Alcoholic Beverage Code	1 day $2,000-$4,000 per day	2 days	5 days
Retailer violates provisions of 16 TAC §45.103.	5 days $3,000-$5,000 per day	10 days	25 days
M/W violate provisions relating to sponsorship of temporary or special events.	10 days $7,000 per day	20 days	30 days
M/W violate provisions relating to co-packaging of alcoholic beverages.	1 day $2,000-$4,000 per day	2 days	5 days
M violates provisions relating to standards of identity for alcohol.	2 days $3,000-$5,000 per day	5 days	7 days

Figure: 19 TAC §21.24(b)(3)

Chart I

Eligible Nonimmigrants--Persons with Visas that Allow them to Domicile in the United States

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
A-1	Ambassadors, public ministers or career diplomats and their immediate family members	Yes
A-2	Other accredited officials or employees of foreign governments and their immediate family members	Yes
A-3	Personal attendants, servants or employees and their immediate family members of A-1 and A-2 visa holders	Yes
B-1	Temporary visitor for business	No
B-2	Temporary visitor for pleasure	No
C-1	Foreign travelers in transit through the United States	No
C-1D	Combined transit and crewmen visa	No
C-2	Person in transit to UN Headquarters under §11 (3), (4), or (5) of the Headquarter Agreement.	No
C-3	Foreign government official, members of immediate family, attendant or personal employee in transit	No
C-4	Transit without Visa. See TWOV	No
D-1	Crewmember departing on same vessel of arrival	No
D-2	Crewmember departing by means other than vessel of arrival	No
E-1	Treaty traders, spouse and children	Yes
E-2	Treaty investors, spouse and children	Yes
F-1	Academic student	No
F-2	Spouse or child of F-1	No
F-3	Academic students who are Canadian or Mexican citizens, who commute across the border to study full-time or part-time in the United States.	No**
G-1	Principal resident representative of recognized foreign member government to international organization, and members of immediate family.	Yes
G-2	Other accredited representatives of recognized foreign member governments to international organization and their immediate family members	Yes

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
G-3	Representatives of non-recognized or nonmember government to international organization, and members of immediate family	Yes
G-4	International organization officer or employee, and their immediate family members	Yes
G-5	Attendants, servants and personal employees of G-1, G-2, G-3 or G-4 visa holders and their immediate family members	Yes
H-1B	Specialty Occupations, DOD workers, fashion models	Yes
H-1C	Nurses going to work for up to three years in health professional shortage areas	No
H-2A	Temporary agricultural workers	No
H-2B	Temporary workers, skilled and unskilled	No
H-3	Trainee	No
H-4	Spouse or child of H-1, H-2 or H-3 visa holders	H-4 dependents of H-1B Yes; all other H-4 dependents, no
I	Visas for foreign media representatives	Yes
J-1	Visas for exchange visitors	No
J-2	Spouse or child of J-1 visa holders	No
K-1	Fiancé(e)	Yes
K-2	Minor child of K-1	Yes
K-3	Spouse of a U.S. citizen (LIFE Act)	Yes
K-4	Child of a K-3 (LIFE Act)	Yes
L1-A	Executive, managerial	Yes
L1-B	Specialized knowledge	Yes
L-2	Spouse or child of L-1	Yes
M-1	Vocational or other nonacademic students, other than language students	No
M-2	Immediate families of M-1 visa holders	No
M-3	Vocational students who are Canadian or Mexican citizens, who commute across the border to study full-time or part-time in the U.S.	No**
N-8	Parent of alien classified as SK-3 "Special Immigrant"	Yes

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
N-9	Child of N-8, SK-1, SK-2, or SK-4 "Special Immigrant"	Yes
NAFTA	North American Free Trade Agreement (NAFTA) (see TN, below)	No
NATO 1	Principal Permanent Representative of Member State to NATO and resident members of official staff or immediate family	Yes
NATO 2	Other representatives of Member State; Dependents of Member of a Force entering in accordance with the provisions of NATO Status-of-Forces agreement; Members of such a Force if issued visas	Yes
NATO 3	Official clerical staff accompanying Representative of Member State to NATO or immediate member	Yes
NATO 4	Official of NATO other than those qualified as NATO-1 and immediate family	Yes
NATO 5	Expert other than NATO officials qualified under NATO-4, employed on behalf of NATO and immediate family	Yes
NATO 6	Members of civilian component who is either accompanying a Force entering in accordance with the provisions of the NATO Status-of-Forces agreement; attached to an Allied headquarters under the protocol on the Status of International Military headquarters set up pursuant to the North Atlantic Treaty; and their dependents	Yes
NATO 7	Attendants, servants or personal employees of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5 or NATO-6, or immediate	Yes
O-1	Extraordinary ability in the sciences, arts, education, business, athletics	Yes
O-2	Essential support staff of 0-1 visa holders	No
O-3	Immediate family members of 0-1 and O-2 visa holders	O-3 dependents of O-1 holders Yes; O-3 dependents of O-2 holders, No
P-1	Individual or team athletes	No
P-2	Artists and entertainers in reciprocal exchange programs	No
P-3	Artists and entertainers in culturally unique programs	No
P-4	Spouse or child of P-1, P-2 and P-3.	No
Q-1	International cultural-exchange visitors	No

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
Q-2	Irish Peace Process Cultural and Training Program (Walsh Visas)	No
Q-3	Spouse or child of Q-2	No
R-1	Religious workers	Yes
R-2	Spouse or child of R-1	Yes
S-5	Informant of criminal organization information	No
S-6	Informant of terrorism information	No
T-1	Victim of a severe form of trafficking in persons	Yes
T-2	Spouse of a T-1	Yes
T-3	Child of a T-1	Yes
T-4	Parent of a T-1 visa holder (if the child is under 21 years of age)	Yes
TC	No longer issued. TN issued in its place.	No
TD	Spouse or child accompanying TN	No
TN	Trade visas for Canadians and Mexicans in NAFTA	No
TPS	Temporary Protected Status	Yes
TWOV	Passenger or Crew	No
U-1	Victim of certain criminal activity	Yes
U-2	Spouse of a U-1	Yes
U-3	Child of a U-1	Yes
U-4	Parent of a U-1 visa holder (if the child is under 21 years of age).	Yes
V-1	Spouse of Legal Permanent Resident (LPR) who is the principal beneficiary of a family-based petition (I-130) which was filed prior to December 21, 2000, and has been pending for at least three years	Yes
V-2	Child of Legal Permanent Resident (LPR) who is the principal beneficiary of a family-based petition (I-130) which was filed prior to December 21, 2000, and has been pending for at least three years	Yes
V-3	Derivative child of a V-1 or V-2 visa holder	Yes

** Please note: these international, commuting students may be eligible for a waiver of nonresident tuition under Texas Education Code §54.060(b).

Figure: 19 TAC §21.25(c)

Chart II
AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned Notary Public, on this day personally appeared _____, known to me, who being by me duly sworn upon his/her oath, deposed and said:

1. My name is _____. I am ___ years of age. I have personal knowledge of the facts stated herein and they are all true and correct.

2. I graduated or will graduate from a Texas high school or received my GED certificate in Texas.

3. I resided in Texas for three years leading up to graduation from high school or receiving my GED certificate.

4. I have resided or will have resided in Texas for the 12 months prior the census date of the semester in which I will enroll in _____ (college/university).

5. I have filed or will file an application to become a permanent resident at the earliest opportunity that I am eligible to do so.

In witness whereof, this _____day of _____, _____.

_____
(Signature)

_____
(Printed Name)

_____
(Student I.D.#)

_____
(Student Date of Birth)

SUBCRIBED TO AND SWORN TO BEFORE ME, on the _____ day of _____, _____, to certify which witness my hand and official seal.

_____ Notary Public in and for the State of Texas

Figure: 30 TAC Chapter 328--Preamble

Format for Computer Recycling Notification and Recovery Plan

Computer Recycling Notification and Recovery Plan for
{Name of manufacturer}
{Street address (no PO Boxes)}
{Mailing address}
{Email address}
{Phone number}

Notification
{Name of manufacturer} has {or "will have, starting on September 1, 2008"} a compliant collection program.

Recovery Plan
All of the following applies exclusively to computer equipment that has been:

- labeled with {name of manufacturer}'s brand(s), both those in use and no longer in use and
- purchased by an individual primarily for personal or home business use.

Consumers do not have to pay a separate fee at the time of recycling to recycle used computer equipment.
{Name of manufacturer} provides for the collection from a consumer of any used computer equipment.
{Name of manufacturer} provides for the recycling or reuse of used computer equipment.
{Name of manufacturer} provides for the collection of computer equipment that is reasonably convenient and available to consumers in this state, and designed to meet the collection needs of consumers in this state.

Consumers can find out specifically how and where to return computer equipment at {www.manufacturerlinktothisinformation.com, i.e. a direct link to the recycling information, not merely www.manfacturername.com).}

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts proposed amendments to §7.42, concerning Enrollment Period, in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4125).

Due to an error by the Texas Register the text of §7.42(d) is incorrect. The word "state" in the first sentence should not have been capitalized. The first sentence of subsection (d) should read as follows:

(d) In each year that new enrollment in the program is temporarily suspended under Education Code, §54.619(j), the board shall determine whether to reopen new enrollment in the program based on the following criteria: the sufficiency of available alternatives for college savings offered by the state: whether analysis of actuarial data shows that the new enrollment in the program may be reopened in an actuarially sound manner, and any other relevant criteria. . . .

TRD-200802787

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/02/08 - 06/08/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/02/08 - 06/08/08 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 05/01/08 - 05/31/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 05/01/08 - 05/31/08 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/08 - 09/30/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/08 - 09/30/08 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 07/01/08 - 09/30/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101[1] for the period of 07/01/08 - 09/30/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 07/01/08 - 09/30/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 07/01/08 - 09/30/08 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 07/01/08 - 09/30/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/08 - 06/30/08 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 06/01/08 - 06/30/08 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in §301.002(14), of the Texas Finance Code.

TRD-200802789
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 28, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 7, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Build-

ing C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 7, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 50'S Group Properties, LTD. dba LONE STAR BEEF PROCESSORS; DOCKET NUMBER: 2008-0041-MLM-E; IDENTIFIER: RN101517597; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: industrial meat packing operation; RULE VIOLATED: 30 Texas Administrative Code (TAC) §335.4, by failing to prevent the improper disposal of industrial solid waste; 30 TAC §335.503(a) and §335.513, by failing to properly classify wastes; and 30 TAC §111.201 and Texas Health & Safety Code (THSC), §382.085(b), by failing to prevent outdoor burning; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: Arkema Inc.; DOCKET NUMBER: 2008-0303-AIR-E; IDENTIFIER: RN100216373; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: industrial organic chemicals plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), Air Permit Number 865A/PSD-TX-1016, Special Condition (SC) 2, and Federal Operating Permit (FOP) Number O-01636, SC 13, by exceeding the permitted hourly rate of sulfur dioxide; PENALTY: $5,100 ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Brothers Materials, Ltd.; DOCKET NUMBER: 2008-0188-AIR-E; IDENTIFIER: RN103004099; LOCATION: Laredo, Webb County; TYPE OF FACILITY: asphalt plant; RULE VIOLATED: 30 TAC §101.20(1) and §106.147(a), THSC, §382.085(b), and 40 Code of Federal Regulations (CFR) §60.8, by failing to conduct performance testing within 60 days after achieving the maximum production rate of operation, but no later than 180 days after initial startup; 30 TAC §106.147(a)(4) and THSC, §382.085(b), by failing to water, oil, or pave all in-plant roads as necessary to achieve maximum control of dust emissions; 30 TAC §111.201 and THSC, §382.085(b), by failing to prevent unauthorized outdoor burning; and 30 TAC §101.24, THSC, §382.085(b), and the Code, §5.702(a), by failing to pay Air Inspection fees and all applicable late fees for Fiscal Year 2008; PENALTY: $3,000; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: City of Arlington; DOCKET NUMBER: 2007-1776-WQ-E; IDENTIFIER: RN104950134; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: the Code, §26.121(a), by failing to prevent an unauthorized discharge; PENALTY: $10,000; Supplemental Environmental Project (SEP) offset amount of $10,000 applied to conducting at least two city-wide pharmaceutical collection events to provide city-wide collection and proper disposal of pharmaceuticals at no cost to the public; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Blooming Grove; DOCKET NUMBER: 2008-0195-MWD-E; IDENTIFIER: RN101720654; LOCATION: Navarro County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011606001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a)(1), by failing to comply with permit effluent limits for five-day biochemical oxygen demand (BOD_5), pH minimum, and total suspended solids (TSS); 30 TAC §305.125(17) and TPDES Permit Number WQ0011606001, Sludge Provisions, by failing to timely submit the annual sludge report; and 30 TAC §319.1 and TPDES Permit Number WQ0011606001, Monitoring and Reporting Requirements Number 1, by failing to provide monitoring results at intervals specified in the permit; PENALTY: $6,402; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3048; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Brazos Country; DOCKET NUMBER: 2008-0462-MLM-E; IDENTIFIER: RN101180883; LOCATION: Austin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; and 30 TAC §291.93(3) and the Code, §13.139(d), by failing to provide a written planning report to the commission explaining how the utility that has exceeded 85% of its capacity will provide the expected service demands to the remaining areas within the boundaries of its certified area; PENALTY: $272; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Godley; DOCKET NUMBER: 2008-0158-MWD-E; IDENTIFIER: RN101919397; LOCATION: Godley, Johnson County; TYPE OF FACILITY: domestic wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10542001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS and flow; and 30 TAC §305.125(17) and TPDES Permit Number 10542001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: $7,600; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Killeen; DOCKET NUMBER: 2008-0148-PWS-E; IDENTIFIER: RN101391308; LOCATION: Killeen, Bell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m) and §290.43(e), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment and failing to provide a properly constructed intruder-resistant fence; 30 TAC §290.43(c)(1), by failing to provide a 16-mesh or finer corrosion-resistant screen for the roof vent on the ground storage tank; 30 TAC §290.43(c)(2), by failing to lock the roof hatch on the ground storage tank; 30 TAC §290.43(c)(3), by failing to ensure that the discharge opening of the ground storage tank overflow terminates above the surface of the ground and is not subject to submergence; 30 TAC §290.42(b)(7), by failing to properly install an air release device with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.46(f)(2), by failing to maintain a record of water works operation and maintenance activities; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists; 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once daily; 30 TAC §290.46(1), by failing to flush dead-end mains at monthly intervals; 30 TAC §290.45(f)(4), by failing to provide a purchase water rate plus production capacity of 0.6 gallons per

minute (gpm); and 30 TAC §290.110(b)(4) and §290.46(d)(2)(B) and THSC, §341.0315(c), by failing to maintain the residual disinfectant concentration in the water throughout the distribution system of at least 0.5 milligrams per liter chloramine; PENALTY: $5,216; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Roscoe; DOCKET NUMBER: 2008-0308-PWS-E; IDENTIFIER: RN101430924; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and §290.47(e), by failing to issue a boil water notification within 24 hours using the prescribed notification format; and 30 TAC §290.46(g), by failing to disinfect a repaired water main in accordance with American Water Works Association requirements and collect and submit water samples until the results indicate that the water system is free of microbiological contamination before placing the repaired water main back into service; PENALTY: $770; ENFORCEMENT COORDINATOR: Epifanio Villarral, (210) 403-4033; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: City of Roxton; DOCKET NUMBER: 2008-0251-MWD-E; IDENTIFIER: RN101920759; LOCATION: Lamar County; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: the Code, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0010204001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with the permitted effluent limitations for dissolved oxygen, BOD_5, pH, and TSS; 30 TAC §305.125(17) and TPDES Permit Number WQ0010204001, Sludge Provisions, by failing to submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010204001, Monitoring and Reporting Requirements Number 1, by failing to submit the discharge monitoring report; PENALTY: $12,595; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: CRVC Via Bayou, LLC; DOCKET NUMBER: 2008-0213-MWD-E; IDENTIFIER: RN101246601; LOCATION: Galveston County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), and TPDES Permit Number WQ0014326001, Monitoring and Reporting Requirements Number 5, by failing to calibrate the flow meter within the previous 12 months; the Code, §26.121(a), 30 TAC §305.121(1), and TPDES Permit Number WQ0014326001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations for ammonia nitrogen (NH_3-N) and carbonaceous biochemical oxygen demand; 30 TAC §305.125(1) and TPDES Permit Number WQ0014326001, Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notifications for effluent violations more than 40% above the permitted limitation; the Code, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0014326001, Permit Conditions Number 2.d, by failing to prevent the unauthorized discharge of sludge; 30 TAC §305.125(1) and TPDES Permit Number WQ0014326001, Other Requirements Number 7, by failing to inspect the wastewater treatment system daily as required by the permit; and 30 TAC §317.7(e,) by failing to provide fencing for the wastewater plant; PENALTY: $20,660; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Development II Partners, Inc. dba Exxon on the Run; DOCKET NUMBER: 2008-0150-PST-E; IDENTIFIER: RN105194682; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: convenience store with retail sales of fuel; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(13) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2008-0160-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), THSC, §382.085(b), and Flexible Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions for carbon monoxide (CO), volatile organic compounds (VOCs), hydrogen sulfide, nitrogen oxide (NO_x), and sulfur dioxide (SO_2); 30 TAC §116.715(a), THSC, §382.085(b), and Flexible Permit Number 18287, SC Number 1, by failing to prevent unauthorized emissions for VOCs and SO_2; 40 CFR §60.105(a)(3)(ii), 30 TAC §101.20(1), and THSC, §382.085(b), by failing to comply with a maximum allowable emission rate of 20 parts per million at 0% oxygen for SO_2; PENALTY: $65,300; SEP offset amount of $26,120 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Faith West, Inc.; DOCKET NUMBER: 2008-0171-PWS-E; IDENTIFIER: RN101188795; LOCATION: Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4), by failing to provide documentation that the water system's Disinfectant Level Quarterly Operating Reports are being submitted to the commission each quarter; 30 TAC §290.121(a), by failing to develop, maintain, and make available for review an up-to-date system monitoring plan that identifies all bacteriological and chemical sampling locations; 30 TAC §290.46(m)(1)(B), by failing to conduct annual inspections of the water system's pressure tank; and 30 TAC §290.46(e) and THSC, §341.033(a), by failing to ensure that the public water supply operation is under the direct supervision of a licensed water works operator at all times; PENALTY: $1,920; SEP offset amount of $1,536 applied to Gulf Coast Waste Disposal Authority-River, Lakes, Bays 'N Bayous Trash Bash; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Fernco Development, Ltd., Lenco Development, Ltd., and Norco Development, Ltd.; DOCKET NUMBER: 2008-0392-MWD-E; IDENTIFIER: RN101243210; LOCATION: Harris County; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: the Code, §26.121(a) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization for the discharge of wastewater; PENALTY: $15,080; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: John M. Graul; DOCKET NUMBER: 2008-0183-WQ-E; IDENTIFIER: RN105367866; LOCATION: Dripping Springs, Travis County; TYPE OF FACILITY: real property; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of sediment and burn debris into the drainages and tributaries of Bee Creek; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2800

South Interstate Highway 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(17) COMPANY: Gray Utility Service L.L.C.; DOCKET NUMBER: 2008-0463-PWS-E; IDENTIFIER: RN102682358; LOCATION: Hamshire, Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(1), by failing to maintain an up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(a) and (b), by failing to make available for commission review a complete up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; 30 TAC §290.43(d)(2), by failing to provide the pressure tank with an easily readable pressure gauge; 30 TAC §290.46(v), by failing to ensure that all water system electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.46(f)(3)(E)(iv), by failing to maintain copies of customer service inspection certificates that can be made available to commission personnel; 30 TAC §§290.46(f)(2), (3)(A)(i)(III), (ii)(III), (B)(iii), and (D)(i), by failing to provide water system records to commission personnel; 30 TAC §290.46(s)(1), by failing to calibrate the well meter once every three years; and 30 TAC §290.51(a)(3) and the Code, §26.0291 and §5.702, by failing to pay all annual and late General Permits Stormwater fees and all annual and late Public Health Service fees; PENALTY: $1,010; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 403-4033; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Harris County; DOCKET NUMBER: 2008-0227-MWD-E; IDENTIFIER: RN103016218; LOCATION: Harris County; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and TPDES Permit Number 12213001, Sludge Provisions, by failing to timely submit the annual sludge reports; 30 TAC §305.125(1) and (5) and TPDES Permit Number 12213001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; 30 TAC §317.4(a)(8), by failing to test the backflow prevention device on the potable water line to the facility on an annual basis; 30 TAC §305.125(1) and TPDES Permit Number 12213001, Monitoring and Reporting Requirements Number 3.b, by failing to maintain records of monitoring information related to the facility's sewage sludge use and disposal activities; 30 TAC §305.125(1) and TPDES Permit Number 12213001, Monitoring and Reporting Requirements Number 5, by failing to calibrate the flow meter on an annual basis; 30 TAC §319.6 and §319.7(a), by failing to conduct Quality Assurance/Quality Control analysis to assure the quality of all measurements; and 30 TAC §319.11(d), by failing to install a properly sized v-notch weir; PENALTY: $6,490; SEP offset amount of $5,192 applied to Galveston Bay Foundation-"Marsh Mania"; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Johnny Stricklin; DOCKET NUMBER: 2008-0760-WOC-E; IDENTIFIER: RN105403174; LOCATION: Crandall, Kaufman County; TYPE OF FACILITY: wastewater operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: KBEC Corporation dba Phillips 66 27502; DOCKET NUMBER: 2008-0138-PST-E; IDENTIFIER: RN100699479; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: McCarty Road Landfill TX, LP; DOCKET NUMBER: 2007-1464-MLM-E; IDENTIFIER: RN100213602; LOCATION: Houston, Harris County; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §335.2(b) and §330.225(c), by failing to prevent the unloading and disposal of unauthorized industrial solid waste; PENALTY: $3,900; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Moore's Water System of Beaver Lake, Inc.; DOCKET NUMBER: 2008-0105-PWS-E; IDENTIFIER: RN102682291; LOCATION: McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gpm per connection; 30 TAC §§290.46(f)(2), (3)(B)(v), and (D)(ii), by failing to keep water system records on file and make them available for commission review; 30 TAC §290.46(j), by failing to complete customer service inspection reports prior to providing continuous water service to new construction; and 30 TAC §290.42(l), by failing to develop and maintain an up-to-date plant operations manual for operator review and reference; PENALTY: $577; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2008-0389-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §116.715(c)(7) and §122.143(4), THSC, §382.085(b), and FOP O-01386, General Terms and Conditions (GTC) and SC 16, by failing to prevent unauthorized emissions; PENALTY: $9,350; SEP offset amount of $3,740 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 899-8784; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 76710-7826, (409) 898-3838.

(24) COMPANY: Nitrous Express, Inc. dba Rorabaugh Mechanical Company; DOCKET NUMBER: 2008-0114-PST-E; IDENTIFIER: RN101894046; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: Fleet refueling ; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees and associated late fees; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(25) COMPANY: North Texas Municipal Water District; DOCKET NUMBER: 2007-1998-MLM-E; IDENTIFIER: RN102342144; LOCATION: Collin and Denton Counties; TYPE OF FACILITY: wastewater treatment facilities and associated collection systems; RULE VIOLATED: 30 TAC §210.4(a), by failing to notify and obtain written approval from the commission before providing reclaimed water to another for use; the Code, §26.121(a)(1), 30 TAC §305.125(1) and TPDES Permit Number 10363001, Permit Conditions 2.g., by failing to prevent the unauthorized discharge of wastewater; and TPDES Permit Number 14008001, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.121(1), and the Code, §26.121(a), by failing to comply with permitted effluent limits for NH_3-N, and flow; PENALTY: $58,475; SEP offset amount of $46,780 applied to Keep Texas Beautiful; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Oceaneering International, Inc.; DOCKET NUMBER: 2008-0204-MWD-E; IDENTIFIER: RN101718773; LOCATION: Houston, Harris County; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: the Code, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number 12466001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations for NH_3-N, TSS, and flow; PENALTY: $5,760; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: Owens Corning Composite Materials, LLC; DOCKET NUMBER: 2008-0214-AIR-E; IDENTIFIER: RN100222140; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: fiberglass manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), New Source Review (NSR) Permit Number 5042/PSD-TX-844M1, SC Number 6(L), and THSC, §382.085(b), by failing to comply with all special conditions contained in the issued permit; PENALTY: $16,600; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4923, (806) 353-9251.

(28) COMPANY: Paintbrush 290 GP, LLC; DOCKET NUMBER: 2007-1720-EAQ-E; IDENTIFIER: RN105354765; LOCATION: Hays County; TYPE OF FACILITY: property RULE VIOLATED: 30 TAC §213.21(d), by failing to obtain approval of an Edwards Aquifer Contributing Zone Plan to begin a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5700, (512) 239-3939.

(29) COMPANY: Pilgrim's Pride Corporation; DOCKET NUMBER: 2008-0144-IHW-E; IDENTIFIER: RN104306501; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: process wastewater collection system; RULE VIOLATED: 30 TAC §335.4 and the Code, §26.121(a), by failing to prevent the unauthorized discharge of waste to any water in the state; and 30 TAC §327.3(b) and the Code, §26.039(b), by failing to report an unauthorized discharge of process wastewater within 24 hours after the occurrence; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Thomas Jecha,(512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(30) COMPANY: Ranger Utility Company; DOCKET NUMBER: 2008-0346-PWS-E; IDENTIFIER: RN101216133; LOCATION: Waller County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the water system's pressure tank; 30 TAC §290.46(u), by failing to plug and seal an abandoned public water supply well or return the well to a non-deteriorated condition; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c) by failing to provide two or more service pumps having a total capacity of 2.0 gpm per connection; PENALTY: $2,030; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 403-4033; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(31) COMPANY: Rohm and Haas Texas Incorporated; DOCKET NUMBER: 2007-2041-AIR-E; IDENTIFIER: RN100223205; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: Air Permit Number 723, SC Number 1, 30 TAC §116.115(c) and THSC, §382.085(b), by failing to comply with the emission limit of 0.27 pounds per hour (lbs/hr) NO_x, Air Permit Number 723, SC Number 1, 30 TAC §116.115(c), and THSC, §382.085(b), by failing to comply with the emission limit of 1.19 lbs/hr NO_x; and Air Permit Number 723, SC Number 1, 30 TAC §116.115(c) and THSC, §382.085(b), by failing to comply with the 0.47 lbs/hr NO_x and 0.022 lbs/hr CO; PENALTY: $81,400; SEP offset amount of $32,560 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 422-8931; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(32) COMPANY: Sabina Petrochemicals LLC; DOCKET NUMBER: 2008-0095-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §101.20(3), §116.115(b)(2)(F) and (c), §122.143(4), THSC, §382.085(b), FOP O-02629, GTC and SC 8, and NSR Permit 41945, SC 1, by failing to maintain the rolling 12-month period cap emissions rate; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP O-02629, GTC and SC 8 and NSR Permit 41945, SC 14A, by failing to properly install a sample port to ensure a representative sample of the water returning to the cooling tower; PENALTY: $19,400; SEP offset amount of $7,760 applied to Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 899-8784; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(33) COMPANY: SIRAJUDDIN CORPORATION dba Highland Food Store; DOCKET NUMBER: 2008-0279-PST-E; IDENTIFIER: RN102031853; LOCATION: Wylie, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §334.50(b)(2)(A)(i) and the Code, §26.3475(a), by failing to equip each separate pressurized line with an automatic line leak detector; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours; 30 TAC §334.74, by failing to investigate a suspected

release within 30 days of discovery; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the agency for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: $12,932; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 79602-6951, (817) 588-5800.

(34) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2008-0182-AIR-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: industrial organic chemicals plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), FOP Number O-01327, SC 17, Air Permit Number 20485, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,300; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 899-8784; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(35) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2008-0391-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemicals manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), THSC, §382.085(b), and Air Permit Number 46307, SC 1, by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(H) and THSC, §382.085(b), by failing to include the permit number on the incident report for the emission event; PENALTY: $8,684; SEP offset amount of $3,474 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red Project; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(36) COMPANY: Tige Boats, Inc.; DOCKET NUMBER: 2008-0526-AIR-E; IDENTIFIER: RN104316500; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: boat manufacturing plant; RULE VIOLATED: 30 TAC §122.145(2) and §122.146(2) and THSC, §382.085(b), by failing to submit the semi-annual deviation report within 30 days after the end of the compliance period and failing to submit the annual compliance certification within 30 days after the end of the compliance period; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(37) COMPANY: Tony Rhett Dickey; DOCKET NUMBER: 2008-0378-AIR-E; IDENTIFIER: RN105093991; LOCATION: Rhome, Wise County; TYPE OF FACILITY: private residence; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition related to outdoor burning; PENALTY: $1,482; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: Ysleta Independent School District; DOCKET NUMBER: 2008-0066-AIR-E; IDENTIFIER: RN102304086; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1 through March 31; PENALTY: $1,140; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-200802772
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 27, 2008

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Correction of Error

The Texas Commission on Environmental Quality adopted amendments to 30 TAC §330.57, concerning Permit and Registration Applications for Municipal Solid Waste Facilities, in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4176). Two errors occurred in the rule text for §330.57(i)(3)(C) on page 4181, left column. A comma was omitted and the word "at" was inadvertently included in the text.

Section 330.57(i)(3)(C) should read as follows:

(C) include the words "For further information on how the public may participate in Texas Commission on Environmental Quality (TCEQ) permitting matters, contact TCEQ," the toll free telephone number for the Office of Public Assistance, and the agency's Web site address;

TRD-200802801

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Notice of Intent to Perform Removal Action at the City View Road Groundwater Plume State Superfund Site, Midland County, Texas

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action, as provided by Texas Health and Safety Code (THSC), §361.133, for the City View Road Groundwater Plume State Superfund site (the site). The site, including all land, structures, appurtenances, and other improvements, is bounded by Jackson Street on the west, Cloverdale Road on the north, Fairground Road on the east, and one block south of City View Road to the south, and is located in Midland County, Texas. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The City View Road Groundwater Plume was discovered in 2003 during an investigation of an oil spill from a pipeline belonging to All American Pipeline Company. The pipeline runs through an area comprised of site built homes, manufactured homes, and a few small businesses. Analysis of groundwater samples collected by the All American Pipeline Company indicated the presence of petroleum hydrocarbons and tetrachloroethylene (also know as perchloroethylene or PCE). Since PCE is not a constituent of crude petroleum, the company reported their findings to the TCEQ's regional office in Midland for additional investigation. Subsequent investigations by the TCEQ's Emergency Response Program detected petroleum hydrocarbons, arsenic, lead, mercury, and PCE. In addition, the groundwater contained high concentrations of chlorides, sulfates, and fluorides (part of secondary drinking water standards). PCE was detected in twenty-four residential water wells. In October 2004, the site was referred to the TCEQ's Superfund Program. The site is proposed for listing under THSC, Chapter 361, Subchapter F.

The State Superfund Program has been monitoring the residential water wells every four months since November 2004. The federal Safe Drinking Water Standards for PCE is 5.0 parts per billion (ppb). To protect public health, the TCEQ has been installing a granulated activated carbon filter system on any residential water well that showed PCE concentrations above 5.0 ppb. Currently there are eleven filtration

systems operating within the site. The area's groundwater is the sole source of water for the residents. The most cost effective solution is to connect the residences with a safe public water supply system as a part of the removal action.

A removal action is appropriate to provide a necessary alternate water supply to the area, and funds from a liable person, independent third person, or the federal government are not sufficient. The City of Midland will supply drinking water to the site and the TCEQ will finance the construction of the waterline. The City of Midland has agreed to design and oversee the construction of the waterline. In addition to the removal action, the TCEQ will conduct a remedial action, selected in accordance with the THSC, §361.187, to address the groundwater contamination.

A portion of the records for this site is available for review during regular business hours at the Midland County Library, Rosalind Redfern Building, 301 West Missouri, Midland, Texas, (432) 688-4320. The copies of the complete public record file may be obtained during business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, with convenient to access ramps that are between Buildings D and E.

For further information, please contact Subhash Pal, P.E., TCEQ Project Manager, Remediation Division, at (512) 239-4513, or John Flores, TCEQ Community Relations Coordinator at (512) 239-5674.

TRD-200802715
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 23, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 7, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 7, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Big Wells; DOCKET NUMBER: 2005-1013-MWD-E; TCEQ ID NUMBER: RN101720357; LOCATION: approximately 2,000 feet west of Farm-to-Market (FM) Road 1867 and 2,200 feet south of United States Highway 85, Big Wells, Dimmit County, Texas; TYPE OF FACILITY: domestic wastewater system; RULES VIOLATED: 30 TAC §305.125(1), Texas Water Code (TWC), §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13782001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to meet the five-day biochemical oxygen demand, dissolved oxygen, total suspended solids, and pH effluent limitations; and 30 TAC §305.125(17) and TPDES Permit Number 13782001, Monitoring and Reporting Requirements Number 1, by failing to submit timely Discharge Monitoring Reports for the monitoring periods ending February and August 2004; PENALTY: $9,030; STAFF ATTORNEY: Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: City of Kenedy; DOCKET NUMBER: 2007-0154-MWD-E; TCEQ ID NUMBER: RN102097839; LOCATION: 1/2 mile east of Highway 72 and FM Road 792, Kenedy, Karnes County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number WQ0010746001, Effluent Limitations, by failing to comply with the permitted effluent limits for Biological Oxygen Demand, Total Suspended Solids, and Daily Average Flow at Outfall 001A for the monitoring periods ending June 30, July 31, and August 31, 2006; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010746001, Sludge Provisions, by failing to submit discharge monitoring reports at the intervals specified in the permit; PENALTY: $29,400; Supplemental Environmental Project (SEP) offset amount of $29,400 applied to Karnes County; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2007-0463-AIR-E; TCEQ ID NUMBER: RN102579307; LOCATION: 2800 Decker Drive, Baytown, Harris County, Texas; TYPE OF FACILITY: refining and supply company; RULES VIOLATED: 30 TAC §116.715(a), Texas Health and Safety Code (THSC), §382.085(b), and Air Permit Number 18287, Special Condition (SC) Number 1, by failing to prevent unauthorized emissions; PENALTY: $30,000; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Herman Hinson and Mary Hinson; DOCKET NUMBER: 2007-1093-MSW-E; TCEQ ID NUMBER: RN104541560; LOCATION: Highway 327 to Frecinas Road, L on Hickory Grove Road; 1352/450 Abstract Number 31 Jacob Hill League Parcel 31-101, Kountze, Hardin County, Texas; TYPE OF FACILITY: 13.48 acres of land; RULES VIOLATED: 30 TAC §330.15, by failing to properly dispose of municipal solid waste at an authorized facility; PENALTY: $2,100; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Kirtley Gravel Co., Inc. dba Sharp Sand and Gravel; DOCKET NUMBER: 2007-0141-MLM-E; TCEQ ID NUMBER: RN104777941; LOCATION: 145 Kirtley Road, Smithville, Fayette County, Texas; TYPE OF FACILITY: sand and gravel mining facility; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081, by failing to obtain the appropriate authorization prior to pumping state water from Bartons Creek for industrial use; PENALTY: $525; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(6) COMPANY: Michael Nassif; DOCKET NUMBER: 2007-1054-PST-E; TCEQ ID NUMBER: RN101884286; LOCATION: 7502 Synott Road, Houston, Harris County, Texas; TYPE OF FACILITY: facility that provided retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding underground storage tanks within 30 days from the date of the occurrence of the change or addition; PENALTY: $5,145; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Robert Perry dba American Camp and Mobile Home Park; DOCKET NUMBER: 2003-0213-MWD-E; TCEQ ID NUMBER: RN102676715; LOCATION: 10348 West Highway 90, Del Rio, Val Verde County, Texas; TYPE OF FACILITY: recreational vehicle park and mobile home subdivision; RULES VIOLATED: TWC, §26.121(a)(1), by failing to obtain a permit prior to discharging waste into or adjacent to waters in the state; PENALTY: $4,200; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: Southwestern Electric Power Company dba SWEPCO; DOCKET NUMBER: 2004-1364-AIR-E; TCEQ ID NUMBER: RN100213370; LOCATION: 1187 County Road 4865, Pittsburg, Titus County, Texas; TYPE OF FACILITY: power plant; RULES VIOLATED: 30 TAC §§101.10(b), 122.143(4), and 122.145(2)(A), THSC, §382.085(b), and Operating Permit O-00026, SC Number 2.E., by failing to report particulate matter (PM) from routine maintenance on the electrostatic precipitators (ESPs) on the 2002 and 2003 emission inventories and by failing to report this deviation on the compliance certification/deviation report covering the periods of this deviation; 30 TAC §106.8(c)(2)(A) and §106.263(g) and THSC, §382.085(b), by failing to record the amount of contaminants emitted during ESP maintenance; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), Permit Number 4381/PSD-TX-3, SC Numbers 2, 3, and 4, and Permit Number O-00026, SC Number 11, by failing to maintain the maximum allowable firing rate (heat input) below 5,156 million British thermal units per hour (MMBtu/hr) at times between January 1, 2001 and April 30, 2004; and 30 TAC §122.143(4) and §122.146(1), THSC, §382.085(b), and Operating Permit O-00026, General Condition (GC), by failing to certify compliance with the terms and conditions of Operating Permit Number O-00026 for the period beginning April 9 and ending on October 9, 2003; PENALTY: $98,176; SEP offset amount of $49,088 applied to Texas Association of Resource Conservation & Development Areas, Inc. Clean School Bus; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: TOTAL Petrochemicals USA, Inc.; DOCKET NUMBER: 2007-0172-AIR-E; TCEQ ID NUMBER: RN102457520; LOCATION: 7600 32nd Street, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.201(b)(4), (7), (8), and (10) and THSC, §382.085(b), by failing to properly submit a final record for 24 emissions events with respect to common name of area, complete identification, and quantification of emitted compounds or related limits; 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 54026, SC 1, by failing to prevent unauthorized emissions releases. Eleven emissions events occurred between February 12 and July 23, 2004, during which sulfur dioxide (SO_2), hydrogen sulfide (H_2S), volatile organic compounds (VOCs), carbon monoxide (CO), and oxides of nitrogen (NOx) from Emission Point Numbers (EPNs) 41NORTHFLARE, 53SOUTHFLR, or 53MIDFLARE; 30 TAC §101.20(3) and §116.115(b)(2)(F) (formerly §116.115(b)(2)(G)), THSC, §382.085(b), and TCEQ Air Permit Number 18936/PSD-TX-762M2, GC 8, by failing to prevent unauthorized emission releases. Beginning on January 26, 2004, EPN 55RGNFLUGS at the Fluidized Catalytic Cracking Unit (FCCU) released 13,491.01 pounds (lbs) of CO in excess of limits and 12,714.71 lbs of SO_2 in excess of limits, intermittently for 72 hours (hrs) during a 356-hour period; no information available on the amount of PM released; 30 TAC §101.20(3) and §116.115(b)(2)(F), formerly (G), THSC, §382.085(b), and TCEQ Air Permit Number 18936/PSD-TX-762M2, Maximum Allowable Emission Rate Table (MAERT), by failing to prevent unauthorized emission releases. Beginning on June 13, 2003, during a three-hour two-minute (min) period, the South Flare, EPN 142, released 5,073.07 lbs of SO_2 in excess of the limit of 0.34 pounds per hour (lbs/hr); 30 TAC §101.201(b)(7) and (8), and (c) and §101.211(c) and THSC, §382.085(b), by failing to submit a final record no later than two weeks after the end of the emissions event or scheduled activity causing the emissions; 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 54026, SC 1, by failing to prevent unauthorized emission releases. Two emissions events occurred respectively on July 14 and July 22, 2004, at EPN 41NORTHFLARE, with respective durations of 53.33 and 14.97 hrs, emitting significant quantities of SO_2 and H_2S; 30 TAC §§101.20, 111.111(a)(4), 113.100, 113.34, and 116.115(c), 40 Code of Federal Regulations (CFR) §60.18(c) and §63.11(a), THSC, §382.085, and TCEQ Air Permit Number 54026, SC 4 and 5, by failing to properly operate EPN 53SOUTHFLR; 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 9195A/PSD-TX-TX453M6, SC 1, by failing to maintain an emission rate below the allowable emission limits. Two emissions events occurred at the Tail Gas Thermal Oxidizer (EPN 125): (1) on July 14, 2004, during a 10.76-hour period, 44,784.01 lbs of SO_2 and 469.74 lbs of H_2S were emitted in excess of limits; and (2) on July 23, 2004, for a 12.27-hour duration, 63,673.00 lbs of SO_2 and 672.32 lbs of H_2S were emitted above limits; 30 TAC §101.201(b)(7) and (8) and THSC, §382.085(b), by failing to completely speciate the VOC emissions in the final reports for emissions events that began on September 16 and October 15, 2004, and by failing to specify the presence and quantity of CO released during an April 22, 2005, emissions event in its final report; 30 TAC §101.201(a) and (g) and THSC, §382.085(b), by failing to electronically submit the final report for the emissions event that began on November 14, 2004, and by failing to notify the TCEQ within 24 hrs of the April 22, 2005, emissions event; 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 49743, SC 1, by failing to prevent unauthorized emissions above permitted limits. Specifically, on October 15, 2004, EPN 22TANK0475 at Tank 475 released approximately 3,358 lbs of

VOCs in excess of permitted limits during a 209-hour period; 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 54026, SC 1, by failing to prevent unauthorized emissions above permitted limits during two emissions events. Specifically, beginning on September 16, 2004, EPN 53SOUTHFLR at the Area 1 East End Complex released approximately 254 lbs of H_2S and 2,247 lbs of VOC in excess of permitted limits during a 1.08-hour period and beginning on November 14, 2004, EPN 41NORTHFLR at the Area 2 FCCU released approximately 86 lbs of H_2S, 1,574 lbs of SO_2, and 7,964 lbs of VOC in excess of permitted limits during a 20.27-hour period; 30 TAC §101.20(3) and §116.115(b)(2), THSC, §382.085(b), and TCEQ Air Permit Number 18936/PSD-TX-762M2, GC 8, by failing to prevent unauthorized emissions above permitted limits. Beginning on April 22, 2005, EPN 55RGNFLGS at the Area 2 FCCU released approximately 377 lbs of NOx in excess of permitted limits during a seven-hour period; 30 TAC §101.20(1) and (3) and §116.115(c), 40 CFR §60.104(b)(1), THSC, §382.085(b), and TCEQ Air Permit Number 18936/PSD-TX-762M2, SC 1A and 8, by failing to maintain the SO_2 and NOx concentrations below the maximum allowable limits; 30 TAC §101.20 and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 9193A/PSD-TX-453M6, MAERT, by failing to maintain an emission rate below the allowable for the North Flare (EPN 307), which is for emergency use only, limiting the amount of emissions to a rate of zero during non-emergency operations-Startup, Shutdown, and Maintenance (SSM) activities. Two such events began on August 16 and September 21, 2003, respectively; 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 9193A/PSD-TX-453M6, MAERT, by failing to maintain an emission rate below the allowable for the North Flare (EPN 307), which is for emergency use only, limiting the amount of emissions to a rate of zero during non-emergency operations-SSM activities, during an emissions event which began on February 8, 2003; 30 TAC §101.201(a)(1)(B) and (2)(D) and THSC, §382.085(b), by failing to properly notify the TCEQ Regional Office within 24 hrs of the reportable emissions events of February 8 - 22, 2003, with respect to EPN 307 and the reportable emission events of September 21, 2003, with respect to EPNs 307 and 142; 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 18936/PSD-TX-762M2, MAERT, by failing to maintain an emission rate below the allowable rate for the South Flare (EPN 142) during an emissions event which started on September 21, 2003; 30 TAC §101.201(a)(2)(D) and (b)(4) and THSC, §382.085(b), by failing to properly notify the TCEQ Regional Office of the reportable emissions event of August 16 - 17, 2003; 30 TAC §101.211(b)(8) and (9) and THSC, §382.085(b), by failing to submit a final record containing a compound descriptive type of all individually listed compounds to have been released during SSM activity, their estimated total quantities, and the authorized emissions limits for applicable compounds; 30 TAC §101.211(c) and THSC, §382.085(b), by failing to submit a final record no later than two weeks after the end of the scheduled SSM activity; 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 54026, SC1, and MAERT, by failing to maintain an emission rate below the allowable limits. There are 16 emissions events between December 31, 2003, and August 18, 2004, which exceeded the MAERT; 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 54026, SC1 and MAERT, by failing to maintain an emission rate below the allowable limit on December 31, 2003, when EPN 41NORTHFLR released 27,704.51 lbs of SO_2 for 4.55 hrs in excess of its 4.13 lbs/hr limit. CO, NOx, and VOC emissions were not reported; 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 9195A/PSD-TX-453M6, SC 1, by failing to maintain an emission rate below the permitted limit. The Shell Claus Offgas Treater (SCOT) Tailgas Incinerator (EPN 125) had the following unauthorized emission event releases in excess of the MAERT limit of 38 lbs/hr for SO_2 and 1.88 lbs/hr for H_2S: on May 23, 2004, during a two-hour and 22-minute period, 93.49 lbs of H_2S, and 9,380 lbs of SO_2; 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and TCEQ Air Permit Number 9195A/PSD-TX-453M6, SC 1, by failing to maintain an emission rate below the permitted limit. The SCOT Tailgas Incinerator (EPN 125) had the following unauthorized emission events in excess of the MAERT limit of 38 lb/hr for SO_2 and 1.88 lb/hr for H_2S: on April 1, 2004, during a five-hour and five-minute period, 211.65 lb of H_2S, and 21,036 lb of SO_2; 30 TAC §101.201(b)(4), (7), and (8) and §101.211(b)(5), (8), and (9) and THSC, §382.085(b), by failing to include all of the required information in the final reports submitted for the emission event reporting; 30 TAC §101.201(a)(1)(B) and (c) and THSC, §382.085(b), by failing to submit a final report within two weeks if the information differs from the information provided in the initial notification; 30 TAC §116.110(a) and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and Permit Numbers 9193A, PSD-TX-453M6, Maximum Allowable Emission Sources-SC2, 9195A, PSD-TX-453M6, MAERT-SC 1, 54026, MAERT-SC 1, 18936, PSD-TX-762M2, GC 8, and 49743, MAERT-SC 1, by emitting into the atmosphere unauthorized air contaminants during 15 emissions events; 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), and Permit Numbers 9193A, PSD-TX-453M6, Maximum Allowable Emission Sources-SC 2, 9195A, PSD-TX-453M6, Maximum Allowable Emission Sources-SC 1, 49743, MAERT-SC1, and 54026, MAERT-SC 1, by emitting into the atmosphere unauthorized air contaminants during four emission events; 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b), and Permit Number 9195A/PSD-TX-453M6, SC 5, by failing to maintain the minimum flame temperature at the SRU Thermal Reactor (EPN F310) when processing sour water stripping gas; 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b), and Permit Number 9195A/PSD-TX-453MC, SC 6, by failing to maintain a minimum sulfur recovery efficiency of at least 99.9% at SRU I and SRU II on January 14 - 18, 23, and March 8 - 10, 2004; 30 TAC §116.115(c), THSC, §382.085(b), and Permit Number 17352, SC 4C, by failing to replace spent canister media within five days after breakthrough was detected on December 16, 2003 in the three activated carbon canisters in which emissions from tanks 300, 302, 303, and 310 - 315 are routed through; 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b), and Permit Number 18936/PSD-TX-762M2, SC 8, by failing to maintain an emission limit below the maximum allowable concentration for NOx and SO_2 at the FCCU flue gas vent (EPN 55RGNFLUGS); 30 TAC §116.115(c), THSC, §382.085(b), and Permit Number 43109, SC 3A, by failing to maintain the NOx emission limit below the allowable hourly average for Boilers 300 (EPN 61STKBLR) and 350 (EPN 61STKBLR) during the time period from January 7 - February 28, 2004; 30 TAC §116.115(c), THSC, §382.085(b), and Permit Number 46396, by failing to conduct proper maintenance at the Tank 926 Flare (EPN 22TK926FLR) and the Benzene Tank Flare (EPN 50BZTNKFLR) from January 2003 - April 2004; THSC, §382.085(b) and Standard Exemption 106 (effective October 5, 1995), by failing to maintain a firing rate of 63 MMBtu/hr or less at the BTX Heater H-52; 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b), and Permit Numbers 54026, SC 1 and 9195A/PSD-TX-453M6, SC 1, by failing to maintain an emission rate below the maximum allowable emission rates for the Tailgas Thermal Oxidizer (EPN 125) and the North Flare (5) (EPN 41NORTHFLR); 30 TAC §101.201(b)(7) and (8) and THSC, §382.085(b), by failing to properly report an emissions event which occurred on June 21, 2003; 30 TAC §101.20(3) and §116.115(b)(2)(F), THSC, §382.085(a) and (b), and Permit 18936/PSD-TX-762M2, by failing to maintain an emission rate below the maximum allowable emission rate for the South Flare (EPN 142) and by failing to prevent unauthorized emissions from the C-200 Sour

Fuel Gas Compressor on June 20 - 21, 2003; 30 TAC §101.201(b)(7) and (8) and THSC, §382.085(b), by failing properly report an emissions event which occurred on February 25 - 27, 2003; 30 TAC §101.20(3) and §116.115(b)(2)(F), THSC, §382.085(b), and Permit 18936/PSD-TX-762M2, by failing to maintain an emission rate below the maximum allowable emission rate for the South Flare (EPN 142) during intermittent lifting of the safety relief valve on C-1A&B at the Atmospheric Crude Unit Number 1 from February 25 - 27, 2003; 30 TAC §101.201(c) and THSC, §382.085(b), by failing to satisfy the final reporting requirements for a reportable emission event which occurred on February 27, 2003; THSC, §382.085(a), by failing to prevent the unauthorized release of 14.55 lbs of benzene into the atmosphere from a leak in the inlet line to the T-4 Recovery Tower on February 27, 2003; 30 TAC §101.201(b)(7) and THSC, §382.085(b), by failing to satisfy the final reporting requirements for a reportable emission event which occurred on May 1 - 3, 2003; THSC, §382.085(a), by failing to prevent the release of unauthorized benzene emissions from a pinhole leak on the level bridle of the Depentanizer Overhead Drum on May 1 - 3, 2003; 30 TAC §101.201(a)(1)(B) and (2)(D) and THSC, §382.085(b), by failing to properly notify the regional office of a reportable emissions event which occurred on July 17, 2003; 30 TAC §101.20(3) and §116.115(b)(2)(F), THSC, §382.085(a) and (b), and Permit 18936/PSD-TX-762M2, by failing to maintain an emission rate below the maximum allowable emission rate for the South Flare (EPN 142) and by failing to prevent unauthorized emissions from the Sour Water Stripper 2 line during the emissions event on July 17, 2003; 30 TAC §101.201(b) and THSC, §382.085(b), by failing to properly report an emissions event that occurred at Natural Gas Liquid (NGL) Sphere 848 on March 16 - 17, 2004; THSC, §382.085(a), by failing to prevent the unauthorized release of 10 lbs of benzene from NGL Sphere 848 on March 16 - 17, 2004; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to properly report an emissions event at Compressor C-301 at the ACU-2 unit which began on December 22, 2003, and ended on December 23, 2004; 30 TAC §116.115(c), THSC, §382.085(b), and Permit Number 54026, SC 1, by failing to maintain an emission rate below the maximum allowable emission rates for the North Flare (5) (EPN 41NORTHFLR) on December 22 - 23, 2003; 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(a) and (b), and Permit 9193A/PSD-TX-453M6, SC2, by failing to comply with the emission limitations at the UNIBON Heater (EPNUNIBH301) and by failing to prevent unauthorized emissions at the Area 1 Resid Processing Complex on February 23 - 26, 2004, when a valve on the startup line between the heater and V-7 was left open; 30 TAC §101.201(a)(1)(B) and (b)(8) and THSC, §382.085(b), by failing to properly report three emissions events which began on December 9, 2003, at 6:25 p.m. from the SRU 1, Distillate Hydrotreater 2, and Amine Treater; 30 TAC §101.201(b)(8) and THSC, §382.085(b), by failing to properly report two emissions events which began on December 9, 2003 at the North and South Flares; 30 TAC §§101.20(3), 111.111(a)(4)(A)(i), and 116.115(c), THSC, §382.085(b), and Permit Numbers 9195A/PSD-TX-453M6, SC1 and 54026, SC 1 and 5, by failing to prevent unauthorized emissions from the North Flare, South Flare, Distillate Hydrotreater Number 2, SRU 1, and Amine Treater during the time period of December 9 - 14, 2003; 30 TAC §101.201(a)(1)(B) and (b)(10) and THSC, §382.085(b), by failing to properly report an emissions event that occurred at the Area 1 NAC which began on November 9, 2003; 30 TAC §116.115(c), THSC, §382.085(b), and Permit Number 54026, SC 1, by failing to prevent unauthorized emissions from the South Flare on November 9, 2003. During the event at the Area 1 NAC, the Flare Gas Recovery System was down so that emissions were routed to the South Flare which exceeded the maximum allowable emission limits of 32.99 and 10.66 lbs/hr for SO_2 and NOx, respectively; 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b), and Permit Numbers 54026, SC 1 and 9195A/PSD-TX-453M6, SC 1, by failing to prevent unauthorized emissions released from the SCOT Tailgas Incinerator and North Flare on October 16, 2003, when an operator inadvertently closed a fuel gas supply control valve to the SCOT unit; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the Beaumont Regional Office within 24 hrs of a reportable emissions event. The event was discovered on October 31, 2004, at 0919 hrs and was reported on November 1, 2004, at 1132 hrs; 30 TAC §101.20(1) and (3) and §116.115(b)(2)(F) and (c), 40 CFR §60.104(b)(1), THSC, §382.085(b), and Air Permit Number 18936/PSD-TX-762M2, GC 8 and SC 1A, by failing to maintain an emission rate below the authorized emission limit. Unauthorized emissions of 7,350.56 lbs of SO_2 were released from the Wet Gas scrubber on October 31, 2004. Additionally, the SO_2 concentration was not maintained below the maximum allowable limit of 50 parts per million during the emissions event; 30 TAC §116.115(b)(2)(F) and (c) and THSC, §382.085(b), by failing to prevent unauthorized VOC emissions of 432 lbs on November 8, 2004; 30 TAC §116.115(c), THSC, §382.085(b), and Air Quality Permit Number 54026, SC 1, by failing to prevent unauthorized emissions of 1,648.76 lbs of SO_2 during a one-hour 36-minute emissions event which occurred at the South Flare on May 3, 2005; 30 TAC §110.20(3) and §116.115(b)(2)(F) and (c), THSC, §382.085(b), and Air Quality Permit Number 18936/PSD-TX-762M2, by failing to maintain the VOCs emission rate below 7.56 lbs/hr at the FPM Cooling Tower between May 17, 2005, and December 15, 2005; 30 TAC §106.371 and THSC, §382.085(b), by failing to maintain the VOCs emission rate below 0.07 lbs/hr at the 805 Reformer Cooling Tower from March 15 - 18, 2005 when unauthorized emissions of 560.8 lbs of benzene, 1,062.6 lbs of toluene, and 88.8 lbs of xylene (a total of 1,712.2 lbs of VOCs) occurred; 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), and Air Quality Permit Number 54026, SC 1, by failing to prevent unauthorized emissions of 1835.42 lbs of SO_2 during a nine hr emissions event which occurred at the Middle Flare (EPN-53 MIDFLARE) on June 19, 2005; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to properly notify the TCEQ Beaumont Regional Office of a reportable emissions event. Specifically, an emissions event began on June 19, 2005, at 1145 hrs, but was not reported until June 20, 2005, at 1553 hrs, in excess of the 24-hour reporting requirement; 30 TAC §106.6(b), THSC, §382.085(b), and Permit by Rule Registration Number 72930, by failing to prevent unauthorized emissions from Tank 532 (EPN 22TANK0532) on August 19, 2005 due to an emissions event; 30 TAC §§122.145(2)(A), 122.146(1), and 122.165(b), THSC, §382.085(b), and Federal Operating Permit (FOP) O-02222, by failing to report the occurrence of deviations in a Semiannual Deviation Report (SDR), by failing to submit an Annual Compliance Certification (ACC), and by failing to properly certify a SDR; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), THSC, §382.085(b), FOP Number O-1267, General Terms and Conditions and Special Terms and Conditions 27, and Air Permit 54026, SC 1, by failing to prevent unauthorized emissions of 7.35 lbs of H_2S and 675.88 lbs of SO_2 during a 14.57-hour emissions event which occurred at the South Flare during the startup of Unit 804 on December 29, 2006; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O-01267, General Terms and Conditions and SC 27, and Air Permit Number 18936/PSD-TX-762M3, GC 8, by failing to maintain VOCs emissions below the allowable emissions rate. Specifically, 592,311 lbs of unauthorized VOC from the FPM Cooling Tower were released from July 12 - November 27, 2006 due to exchanger leaks within the saturated Liquids and Crude Units; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O-001267, General Terms and Conditions and SC 27, Air Permit Number 54026, SC 1, and Air Permit Number 9195A, PSD-TX-453M6, SC 1, by failing to prevent unauthorized emissions of 229.98 lbs of H_2S, 22,144.41 lbs of SO_2, 352.24 lbs of

NOx, 666.45 lbs of CO, 19.42 lbs of PM, 30.76 lbs of VOC, and 10.10 lbs of ammonia from the North and South Flares and the Sulfur Recovery Tail Gas Oxidizer during a four-hour 40-minute emissions event on November 29, 2006; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), THSC, §382.085(b), FOP Number O-01267 General Terms and Conditions and SC 27, and Air Permit Number 54026, SC 1, by failing to prevent unauthorized emissions of 13.51 lbs of H_2S and 1,264.68 lbs of SO_2 from the North and South Flares during a two-hour 42-minute emissions event on December 10, 2006; and 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), and Air Permit Number 54026, SC 1 and GC 8, by failing to prevent unauthorized emissions of 99.28 lbs of H_2S and 9,078.06 lbs of SO_2 from Unit 835; PENALTY: $749,910; SEP offset amount of $374,955 STAFF ATTORNEY: Jeffrey J. Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Waste Control Specialists LLC; DOCKET NUMBER: 2006-0796-MLM-E; TCEQ ID NUMBER: RN101702439; LOCATION: 9998 West State Highway 176, Andrews, Andrews County, Texas; TYPE OF FACILITY: commercial waste transfer, treatment, storage, and disposal facility; RULES VIOLATED: 30 TAC §331.6 and §336.203, by injecting radioactive wastes without authorization into or above a formation, located within one-quarter mile of the well that serves as an underground source of drinking water and by disposing of radioactive material without having a radioactive material disposal license; and 30 TAC §335.42(2) and (3), by causing, suffering, allowing, or permitting the collection, handling, storage, processing, or disposal of industrial solid waste in a manner as to cause the reaction and maintenance of a nuisance or the endangerment of the public health and welfare; PENALTY: $151,200; SEP offset amount of $65,970 applied to City of Andrews First Time Water & Sewer Service for Low Income Residents; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200802774
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 27, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 7, 2008**. The commission will consider any written comments received; and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 7, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Cleaning Stop LLC dba Crystal Cleaners; DOCKET NUMBER: 2006-1400-DCL-E; TCEQ ID NUMBER: RN103988812; LOCATION: 108 Ovilla Road, Suite 5, Red Oak, Ellis County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (THSC), §374.102, by failing to renew the registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c) and Texas Water Code (TWC), §5.702, by failing to pay dry cleaner registration fees for TCEQ Financial Administration Account Number 24003943 and associated late fees for Fiscal Year 2006; PENALTY: $270; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Demitree Ochoa dba Yo Cleaners; DOCKET NUMBER: 2006-1211-DCL-E; TCEQ ID NUMBER: RN104097530; LOCATION: 9305 North Wayside Drive, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Hari Enterprises, L.L.C.; DOCKET NUMBER: 2006-0175-PWS-E; TCEQ ID NUMBER: RN102280518; LOCATION: 21411 Highway 59, El Campo, Wharton County, Texas; TYPE OF FACILITY: gas station with a public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to conduct routine monthly bacteriological sampling of the public drinking water supply and by failing to provide public notification of the failure to conduct monthly bacteriological sampling; PENALTY: $2,835; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Inwood Center, LLC dba 99 Center Cleaners aka Inwood Center, LLC dba Inwood Center Cleaners; DOCKET NUMBER: 2006-1719-DCL-E; TCEQ ID NUMBER: RN104158167; LOCATION: 2311 Little York Road, Suite A, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility;

PENALTY: $420; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Irma M. Saldivar dba Saldivar Food Store 2; DOCKET NUMBER: 2005-0614-PST-E; TCEQ ID NUMBER: RN102717543; LOCATION: 901 East Harrison Avenue, Harlingen, Cameron County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding underground storage tank fees for TCEQ Financial Account Number 0051655U for Fiscal Year 2004; PENALTY: $2,140; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Laura Strawbridge dba K & L Carwash; DOCKET NUMBER: 2005-1613-IWD-E; TCEQ ID NUMBER: RN104580378; LOCATION: 200 4th Street, Graham, Young County, Texas; TYPE OF FACILITY: carwash; RULES VIOLATED: TWC, §26.121(a), by failing to obtain an authorization from the TCEQ to discharge process wastewater from a commercial carwash into or adjacent to water in the state; PENALTY: $2,100; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Weratich Investments, Inc. dba Roadies; DOCKET NUMBER: 2005-0277-PST-E; TCEQ ID NUMBER: RN101432193; LOCATION: 1002 South Stemmons Freeway, Lake Dallas, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the USTs can be accepted; 30 TAC §334.8(c)(5)(B)(i), by failing to ensure that an application for renewal of a delivery certificate is properly and timely filed; 30 TAC §334.50(b)(1)(A), (2)(A), and (2)(A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to ensure that all tanks are monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to monitor piping in a UST system in a manner which will detect a release from any portion of the piping system, and by failing to test the line leak detector at least once per year for performance and operational reliability; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly and by failing to inspect and test the cathodic protection system for operability and adequacy of protection within three to six months after installation and at a subsequent frequency of at least once every three years; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement of modification, whichever occurs first; 30 TAC §§334.10(b)(1)(B), 115.246(7)(A), and 115.242(2) and THSC, §382.085(b), by failing to maintain legible copies of all required records pertaining to an UST system in a secure location on the premises of the UST facility, immediately accessible for reference and use by the UST system operator, and immediately available for inspection upon request by agency personnel, by failing to maintain Stage II records on-site at facilities ordinarily manned during business hours, and by failing to maintain the Stage II vapor recovery system in proper operating condition; and 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified as listed on the facility's UST Registration & Self-Certification Form; PENALTY: $35,750; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200802775
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 27, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 37 and New 30 TAC Chapter 218

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 37, Subchapter X, Financial Assurance Requirements for Brine Evaporation Pits; and proposed new Chapter 218, Brine Evaporation Pits.

The proposed rulemaking would implement Senate Bill 1037 requiring regulation of evaporation pits operated for the commercial production of brine water, minerals, salts, or other naturally occurring substances that are not regulated under the authority of the Texas Railroad Commission. The rulemaking includes standards to prevent pollution of surface and groundwater resources from brine evaporation pit operations and requires adequate financial assurance to ensure satisfactory brine evaporation pit closure and third party pollution liability insurance.

The commission will hold a public hearing on this proposal in Austin on June 24, 2008 at 10:00 a.m. in Room 201 of Building B, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-034-218-PR. The comment period closes July 7, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact David W. Galindo, Wastewater Permitting Section at (512) 239-0951.

TRD-200802711

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 23, 2008

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Notice of Request for Public Comment and Notice of a Public Meeting for Two Total Maximum Daily Loads

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment two draft total maximum daily loads (TMDLs) for dissolved oxygen in Dickinson Bayou (Segments 1103 and 1104) of the San Jacinto-Brazos Coastal Basin, located in Brazoria and Galveston Counties. The TCEQ will conduct a public meeting to receive comments on the draft TMDLs. This announcement also constitutes notice that the TMDLs will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDLs for dissolved oxygen in Dickinson Bayou (Segments 1103 and 1104). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances. After the public comment period, TCEQ staff may revise the TMDLs, if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments will be made available on the TCEQ Web site. The TMDLs will then be submitted to EPA Region 6 for approval. Upon approval, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on **June 12, 2008, 7:00 p.m., at the Dickinson Historic Railroad Center, 218 FM 517 West, Dickinson, Texas 77539**. At this meeting individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments should be submitted to Roger Miranda, Water Programs Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by **5:00 p.m., July 5, 2008**, and should reference *Two Total Maximum Daily Loads for Dissolved Oxygen in Dickinson Bayou, For Segment Numbers 1103 and 1104*. For further information regarding the draft TMDLs, please contact Roger Miranda, Water Programs Division, at (512) 239-6278 or *rmiranda@tceq.state.tx.us*. Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: *http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html* or by calling Diana Washington at (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact Diana Washington at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200802773
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 27, 2008

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Notice of Request for Public Comment and Notice of Public Meeting for Nine Total Maximum Daily Loads

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment nine draft total maximum daily loads (TMDLs) for bacteria in Clear Creek and Tributaries (Segments 1101, 1101B, 1101D, 1102, 1102A, 1102B, 1102C, 1102D, and 1102E) of the San Jacinto-Brazos Coastal Basin, located in Brazoria, Harris, Galveston, and Fort Bend Counties. The TCEQ will conduct a public meeting to receive comments on the draft TMDLs. This announcement also constitutes notice that the TMDLs will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDLs for bacteria in Clear Creek and Tributaries (Segments 1101, 1101B, 1101D, 1102, 1102A, 1102B, 1102C, 1102D, and 1102E). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances. After the public comment period, TCEQ staff may revise the TMDLs, if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments will be made available on the TCEQ Web site. The TMDLs will then be submitted to EPA Region 6 for approval. Upon approval, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on June 11, 2008, 5:00 p.m., at the City of League City Civic Center, 300 West Walker, League City, Texas 77573. At this meeting individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments should be submitted to Ron Stein, Water Programs Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., July 5, 2008, and should reference *Nine Total Maximum Daily Loads for Bacteria in Clear Creek and Tributaries, for Segment Numbers 1101, 1101B, 1101D, 1102, 1102A, 1102B, 1102C, 1102D, and 1102E*. For further information regarding the draft TMDLs, please contact Ron Stein, Water Programs Division, at (512) 239-4507 or *rstein@tceq.state.tx.us*. Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: *http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html* or by calling Diana Washington at (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact Diana Washington at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200802777
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 27, 2008

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Notice of Request for Public Comment and Notice of Public Meeting for Eighteen Total Maximum Daily Loads

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment 18 draft total maximum daily loads (TMDLs) for bacteria in Buffalo and Whiteoak Bayous and Tributaries (Segments 1013, 1013A, 1013C, 1014, 1014A, 1014B, 1014E, 1014H, 1014K, 1014L, 1014M, 1014N, 1014O, 1017, 1017A, 1017B, 1017D, and 1017E) of the San Jacinto River Basin, located in Waller, Harris, and Fort Bend Counties. The TCEQ will conduct a public meeting to receive comments on the draft TMDLs. This announcement also constitutes notice that the TMDLs will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDLs for bacteria in Buffalo and Whiteoak Bayous and Tributaries (Segments 1013, 1013A, 1013C, 1014, 1014A, 1014B, 1014E, 1014H, 1014K, 1014L, 1014M, 1014N, 1014O, 1017, 1017A, 1017B, 1017D, and 1017E). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances. After the public comment period, TCEQ staff may revise the TMDLs, if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments will be made available on the TCEQ Web site. The TMDLs will then be submitted to EPA Region 6 for approval. Upon approval, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on June 9, 2008, 4:00 p.m., at the Houston-Galveston Area Council, Conference Room A, 3555 Timmons, Houston, Texas 77027. At this meeting, individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments should be submitted to Ron Stein, Water Programs Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., July 5, 2008, and should reference *Eighteen Total Maximum Daily Loads for Bacteria in Buffalo and Whiteoak Bayous and Tributaries, For Segment Numbers 1013, 1013A, 1013C, 1014, 1014A, 1014B, 1014E, 1014H, 1014K, 1014L, 1014M, 1014N, 1014O, 1017, 1017A, 1017B, 1017D, and 1017E*. For further information regarding the draft TMDLs, please contact Ron Stein, Water Programs Division, at (512) 239-4507 or *rstein@tceq.state.tx.us*. Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: *http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html* or by calling Diana Washington at (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact Diana Washington at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200802776
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 27, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of May 15, 2008 through May 22, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

BISTONE MUNICIPAL WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014012001 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately one mile north of the intersection of State Highway 164 and Farm-to-Market Road 39 in Limestone County, Texas.

BOLIVAR UTILITY SERVICES LLC has applied for a renewal of TPDES Permit No. WQ0012936001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located on the north side of State Highway 87, approximately 3,000 feet west of the intersection of State Highway 87 and Monkhouse Road in the City of Crystal Beach in Galveston County, Texas.

CITY OF CORPUS CHRISTI Del Mar College District; Port of Corpus Christi Authority; Texas Department of Transportation; and Texas A&M University - Corpus Christi, which operate the City of Corpus Christi Municipal Separate Storm Sewer System, have applied for a renewal of NPDES Permit No. TXS000601, which authorizes storm water point source discharges to surface water in the state from the City of Corpus Christi Municipal Separate Storm Sewer System. This permit will be renewed as TPDES Permit No. WQ0004200000. The municipal separate storm sewer system is located in the City of Corpus Christi, in Nueces, Kleberg, San Patricio, and Aransas Counties, Texas.

CITY OF SOUTHSIDE PLACE has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014850001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 265,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0010712001 which expired September 1, 2007. The facility is located at 3701 Bellaire Boulevard, approximately 1.5 miles east of the

intersection of Interstate Highway 610 and Bellaire Boulevard in Harris County, Texas.

CITY OF THRALL has applied for a renewal of Permit No. WQ0013448001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 66,000 gallons per day via surface irrigation of 26 acres of non public access land. This permit will not authorize a discharge of pollutants into waters in the State. TCEQ received this application on March 3, 2008. The wastewater treatment facility and disposal site are located approximately 1.24 miles south of the intersection of U.S. Highway 79 and Bound Street, south of the City of Thrall in Williamson County, Texas.

DENVER CITY ENERGY ASSOCIATES LP GS ELECTRIC GENERATING COOPERATIVE INC AND GOLDEN SPREAD ELECTRIC COOPERATIVE INC which operates Mustang Station, has applied for a major amendment to TCEQ Permit No. WQ0003951000 to amend the definition of low volume wastewater to include evaporation cooler blowdown and wastewater treated by the oil/water separator from Mustang Station Unit 5 facility. The current permit authorizes the disposal cooling tower blowdown and low volume wastewater at an annual average flow not to exceed 153,600 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at 1937 County Road 390, approximately five miles east of the intersection of State Highway 83 and State Highway 214, approximately five miles east of Denver City, Yoakum County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 150 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011863001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,640,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 11621 C Walters Road, approximately three miles west of the intersection of Interstate Highway 45 and Greens Bayou Crossing in Harris County, Texas.

HIGH ISLAND INDEPENDENT SCHOOL DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0013886001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 28,000 gallons per day. The facility is located approximately 4,000 feet north of the intersection of State Highway 124 and State Highway 87 in Galveston County, Texas.

JAMES NICHOLAS VRATIS has applied for a renewal of TPDES Permit No. WQ0014489001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility will be located on North Redfish Street within the Bolivar Peninsula, approximately 2,250 feet northwest of the intersection of State Highway 87 and North Stingaree Drive in Galveston County, Texas.

LAKE MUNICIPAL UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014598001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 188,000 gallons per day. The facility is located at 1501 1/2 East Freeway, approximately 6,700 feet west of Thompson Road fronting on the north access road of Interstate Highway 10 in Harris County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 56 has applied for a renewal of TPDES Permit No. WQ0013760001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 4 1/2 miles from Porter along Farm-to-Market Road 1314, northwest of the intersection of U.S. Highway 59 and Farm-to-Market Road 1314 in Montgomery County, Texas.

PINEWOOD COMMUNITY LIMITED PARTNERSHIP has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0012643001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 9601 Dowdell Road, approximately 1/4 mile northeast from the intersection of Dowdell Road with Farm-to-Market Road 2920 in Harris County, Texas.

SAN JACINTO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0011658001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 2,000 feet east of Interstate Highway 45, approximately 1.5 miles south of Farm-to-Market 1488, adjacent to the Missouri Pacific Railroad tracks and an unnamed tributary in Montgomery County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200802791
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 28, 2008

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Texas Facilities Commission

Request for Proposals #303-8-11705

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), and the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-8-11705. TFC seeks a 5 or 10-year lease of approximately 16,754 square feet of office space in Round Rock, Williamson County, Texas.

The deadline for questions is June 13, 2008; and the deadline for proposals is June 25, 2008 at 3:00 p.m. The award date is August 20, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=76764*.

TRD-200802786
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 28, 2008

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Request for Proposals #303-8-11761

The Texas Facilities Commission (TFC), on behalf of the Soil and Water Conservation Board (SWCB), announces the issuance of Request for Proposals (RFP) #303-8-11761. TFC seeks a 10 year lease of approximately 7,000 square feet of office space in Temple, Bell County, Texas.

The deadline for questions is June 18, 2008 and the deadline for proposals is June 30, 2008 at 3:00 p.m. The award date is August 21, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=76766*.

TRD-200802785
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 28, 2008

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Request for Proposals #303-8-11764

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department, announces the issuance of Request for Proposals (RFP) #303-8-11764. TFC seeks a five (5) year lease of approximately 5,115 square feet of office space, maintenance shop and fenced impound lot in Abilene, Taylor, Texas.

The deadline for questions is June 13, 2008 and the deadline for proposals is June 23, 2008 at 3:00 p.m. The award date is July 16, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at: *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=76811*.

TRD-200802784
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 28, 2008

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Texas Health and Human Services Commission

Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Health and Human Services Commission (HHSC) announces the release of its Request for Proposals (RFP No. 529-08-0180) to secure the services of a qualified vendor to assist the State in completing the Medicaid Information Technology Architecture (MITA) State-Self Assessment (SS-A), the gap analysis and the to-be MITA roadmap. HHSC seeks to contract with a single qualified consultant to fulfill the requirements pursuant to this RFP.

The primary objectives for this procurement are to assist HHSC in fulfilling Centers for Medicare and Medicaid Services (CMS) direction to participate in the CMS national MITA initiative. HHSC intends to procure vendor services to develop the following deliverables:

* MITA Texas Medicaid State Self-Assessment

* "To-be" project road map that describes and prioritizes tasks and provides a high-level implementation schedule.

* Gap Assessment using the SS-A as the "as-is" inventory and identifying the gaps between the current Texas Medicaid processes and systems and the MITA Framework 2.0.

The RFP is located in full on HHSC's Business Opportunities Page under "Contracting Opportunities" link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on May 30, 2008.

The successful contractor will be expected to identify the "As Is" state and "To Be" (target) state of a State's Medicaid business enterprise. Using a standard methodology and tools to document the way a State conducts business now, and plans to conduct business in the future, the MITA SS-A provides a baseline that will facilitate collaboration between the States and CMS, between the States and industry, and among the States themselves. This is accomplished by using the MITA SS-A process to align States' Medicaid business areas to MITA's 8 business areas and sub-areas, then to map a States' business processes to those contained in MITA Framework 2.0.

Texas Health and Human Services Commission's Sole Point-of-Contact for Procurement:

Elizabeth Ward, Purchaser

Texas Health and Human Services Commission

Enterprise Contracts and Procurement Services (ECPS) Department

909 West 45th Street; Building 1

Mail Code: 2020

Austin, Texas 78751

Telephone: (512) 206-5540

Fax: (512) 206-5475

E-mail: elizabeth.ward@hhsc.state.tx.us

All questions regarding the RFP must be sent in writing to the above-referenced contact by Close of Business (COB) on June 12, 2008, HHSC will post all written questions received with HHSC's responses on its website on July 7, 2008, or as they become available. All proposals must be received at the above-referenced address on or before 2:00 p.m. Central Time on July 21, 2008. Proposals received after this time and date will not be considered.

HHSC will not hold a Vendor Conference for this procurement.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200802779
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 27, 2008

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by SPRINGFIELD INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Covina, California.

Application for admission to the State of Texas by UNIVERSAL HEALTH CARE, INC., under the assumed name TEXAS UNIVERSAL, a health maintenance organization (HMO). The home office is in St. Petersburg, Florida.

Application for admission to the State of Texas by UNIVERSAL HEALTH CARE, INC., under the assumed name TEXAS UNIVERSAL HEALTHCARE, a health maintenance organization (HMO). The home office is in St. Petersburg, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200802790
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 28, 2008

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Chesapeake Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division--Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Chesapeake Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-200802700
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 22, 2008

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Connecticut General Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division--Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Connecticut General Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-200802699
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 22, 2008

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of JHSC ENTERPRISES, LLC. (using the assumed name PARKER & ASSOCIATES), a domestic third party administrator. The home office is CARROLLTON, TEXAS.

Application of PENSERV PLAN SERVICES, INC., a foreign third party administrator. The home offfice is WEST COLUMBIA, SOUTH CAROLINA.

Application of YORK CLAIMS SERVICE, INC., a foreign third party administrator. The home offfice is NEW YORK, NEW YORK.

Application of HUEY T. LITTLETON CLAIMS SERVICE, WESTERN DIVISION, INC., a domestic third party administrator. The home offfice is AUSTIN, TEXAS.

Application of AMTRUST NORTH AMERICA, INC., a foreign third party administrator. The home offfice is DOVER, DELAWARE.

Application to change the name and home office of CAREMARK, INC., NORTHBROOK, ILLINOIS to CAREMARK, L.L.C., a foreign third party administrator. The home office is SAN FRANCISCO, CALIFORNIA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200802660
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 21, 2008

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of PHARMACARE MANAGEMENT SERVICES, INC., a foreign third party administrator. The home office is DOVER, DELAWARE.

Application to change the name of AMERICAN INTERNATIONAL ASSISTANCE SERVICES, INC., to AIG TRAVEL ASSIST, INC., a foreign third party administrator. The home office is DOVER, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200802802
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 28, 2008

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Texas Lottery Commission

Instant Game Number 774 "$1,000,000 Vegas Luck"

The Texas Lottery Commission filed for publication Instant Game Number 774 "$1,000,000 Vegas Luck." The document was published in the November 17, 2006, issue of the *Texas Register* (31 TexReg 9534). The procedure for claiming a $1,000,000 prize was changed after the procedure was filed with the Texas Register to provide that it may be claimed at any Texas Lottery Claim Center. Sections 2.3.B-F, "Procedure for Claiming Prizes," were amended as Sections 2.3.B-E which now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "$1,000,000 VEGAS LUCK" Instant Game prize of $2,000, $10,000 or $1,000,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$1,000,000 VEGAS LUCK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

TRD-200802792
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 28, 2008

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Instant Game Number 817 "$1 Million Cash"

The Texas Lottery Commission filed for publication Instant Game Number 817 "$1 Million Cash." The document was published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3894). The procedure for claiming a $1,000,000 prize was changed after the procedure was filed with the Texas Register to provide that it may be claimed at any Texas Lottery Claim Center. Sections 2.3.B-F, "Procedure for Claiming Prizes," were amended as Sections 2.3.B-E which now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "$1 MILLION CASH" Instant Game prize of $1,000, $10,000 or $1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$1 MILLION CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

TRD-200802793
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 28, 2008

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Instant Game Number 823 "$130 Million Spectacular"

The Texas Lottery Commission filed for publication Instant Game Number 823 "$130 Million Spectacular." The document was published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1951). The procedure for claiming a $1,000,000 prize was changed after the procedure was filed with the Texas Register to provide that it may be claimed at any Texas Lottery Claim Center. Sections 2.3.B and 2.3.C, "Procedure for Claiming Prizes," were amended and now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "$130 MILLION SPECTACULAR" Instant Game prize of $1,000, $2,000, $20,000, $50,000 or $1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "$130 MILLION SPECTACULAR" top level prize of $5,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

TRD-200802794
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 28, 2008

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Instant Game Number 825 "$1 Million Extravaganza"

The Texas Lottery Commission filed for publication Instant Game Number 825 "$1 Million Extravaganza." The document was published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2930). The procedure for claiming a $1,000,000 prize was changed after the procedure was filed with the Texas Register to provide that it may be claimed at any Texas Lottery Claim Center. Sections 2.3.B-F, "Procedure for Claiming Prizes," were amended as Sections 2.3.B-E which now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "$1 MILLION EXTRAVAGANZA" Instant Game prize of $1,000, $10,000 or $1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$1 MILLION EXTRAVAGANZA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

TRD-200802795
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 28, 2008

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Instant Game Number 833 "$130 Million Payout Bonanza"

The Texas Lottery Commission filed for publication Instant Game Number 833 "$130 Million Payout Bonanza." The document was published in the May 11, 2007, issue of the *Texas Register* (32 TexReg

2718). The procedure for claiming a $1,000,000 prize was changed after the procedure was filed with the Texas Register to provide that it may be claimed at any Texas Lottery Claim Center. Sections 2.3.B and 2.3.C, "Procedure for Claiming Prizes," were amended and now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "$130 MILLION PAYOUT BONANZA" Instant Game prize of $1,000, $2,000, $20,000, $50,000 or $1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "$130 MILLION PAYOUT BONANZA" top level prize of $5,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

TRD-200802796
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 28, 2008

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Instant Game Number 1016 "$1 Million Holiday Winnings"

The Texas Lottery Commission filed for publication Instant Game Number 1016 "$1 Million Holiday Winnings." The document was published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6889). The procedure for claiming a $1,000,000 prize was changed after the procedure was filed with the Texas Register to provide that it may be claimed at any Texas Lottery Claim Center. Sections 2.3.B - F, "Procedure for Claiming Prizes," were amended as Sections 2.3.B - E which now read as follows:

2.3 Procedure for Claiming Prizes.

B. To claim a "$1 MILLION HOLIDAY WINNINGS" Instant Game prize of $2,000, $10,000 or $1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$1 MILLION HOLIDAY WINNINGS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

TRD-200802797
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 28, 2008

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Instant Game Number 1076 "$50,000 Solid Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1076 is "$50,000 SOLID GOLD". The play style is "key number match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1076 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1076.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, GOLD BAR SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $200, $2,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1076 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
GOLD BAR SYMBOL	WINALL
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY

$100	ONE HUND
$200	TWO HUND
$2,000	TWO THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $200.

H. High-Tier Prize - A prize of $2,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1076), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1076-0000001-001.

K. Pack - A pack of "$50,000 SOLID GOLD" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50,000 SOLID GOLD" Instant Game No. 1076 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$50,000 SOLID GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins the PRIZE shown for that number. If the player reveals a "gold bar" symbol, the player wins ALL TWENTY PRIZES INSTANTLY! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "GOLD BAR" (win all) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No four or more matching non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. When the "GOLD BAR" (win all) play symbol appears, there will be no occurrence of any of YOUR NUMBERS play symbols matching any WINNING NUMBER play symbol.

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 SOLID GOLD" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $25.00, $50.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 SOLID GOLD" Instant Game prize of $2,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 SOLID GOLD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$50,000 SOLID GOLD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$50,000 SOLID GOLD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1076. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1076 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	537,600	9.38
$10	504,000	10.00
$15	67,200	75.00
$20	84,000	60.00
$25	67,200	75.00
$50	67,200	75.00
$100	3,402	1,481.48
$200	2,100	2,400.00
$2,000	210	24,000.00
$50,000	10	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.78. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1076 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1076, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200802714
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 23, 2008

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 20, 2008, SC TxLink, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60732. Applicant intends to reflect a change in ownership/control.

The Application: Application of SC TxLink, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 35699.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 11, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35699.

TRD-200802759

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2008

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 22, 2008, IBFA Acquisition Company, LLC filed an application with the Public Utility Commission of Texas (Commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60661. Applicant intends to reflect a change in ownership/control to Telava Acquisitions, Inc.

The Application: Application of IBFA Acquisition Company, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 35705.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 11, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35705.

TRD-200802780
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 27, 2008

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 22, 2008, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of dpi Teleconnect, LLC for Designation as an Eligible Telecommunications Carrier, Docket Number 35706.

The Application: The company is requesting ETC designation in the exchanges of Southwestern Bell Telephone Company d/b/a AT&T Texas, Verizon Southwest, Embarq, and Windstream.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by June 26, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 35706.

TRD-200802781
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 27, 2008

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Notice of Commission Staff Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on May 13, 2008, for the selection of entities responsible for transmission improvements necessary to deliver renewable energy from competitive renewable energy zones.

Docket Style and Number: Commission Staff's Petition for the Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones, Docket Number 35665.

The Application: The Commission Staff filed this petition for selection of entities responsible for transmission improvements necessary to deliver renewable energy from competitive renewable energy zones.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477 no later than June 27, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 35665.

TRD-200802758
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2008

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200802771
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 27, 2008

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University of North Texas System

Notice of Invitation for Consultants to Provide Offers of Consulting Services

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) System extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to the University of North Texas System and its member institutions.

Scope of Work:

The selected consulting firm will be responsible for assisting the UNT System and member institutions in evaluating and assessing the potential for a School of Pharmacy at the University of North Texas at Dallas; and developing a plan setting forth necessary steps for creating a School of Pharmacy. Please go to University of North Texas' website http://pps.unt.edu to view the Request for Proposal.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) the consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this Invitation, any unique benefits the consultant offers the UNT System, and any other information the consultant desires the UNT System to consider in connection with the consultant's offer; (8) information to assist the UNT System in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist the UNT System in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist the UNT System in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist the UNT System in assessing the overall cost to the UNT System for the requested services to be performed; and (12) information to assist the UNT System in assessing the consultant's capability and financial resources to perform the requested services.

Selection Process:

The consulting services sought herein do not relate to services previously provided to the UNT System.

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by the UNT System on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by the UNT System on the basis of negotiation with any of the consultants. At the UNT System's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. The UNT System will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. The UNT System will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer, however the UNT System reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, the UNT System may permit a consultant to revise its offer in order to obtain the consultant's best final offer. The UNT System is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by the UNT System. The UNT System reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of the UNT System.

Criteria for Selection:

The successful offer (Successful Offer) must be submitted in response to this Invitation by the Submittal Deadline will be the offer that is the most advantageous to the UNT System in the UNT System's sole discretion. Offers will be evaluated by University of North Texas System and member institution personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to the UNT System by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to the UNT System. The successful consultant will be required to enter into a contract acceptable to the UNT System.

Consultant's Acceptance of Offer:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Offer Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this Invitation; and (2) the consultant's recognition that some subjective judgments must be made by the UNT System during this Invitation process.

Finding by Chancellor:

The Chancellor of the University of North Texas System finds that the consulting services are necessary because the University of North Texas System does not have the specialized experience or the staff resources to achieve these objectives. The University of North Texas System believes that such expert consulting services will be cost effective, as they will ensure that the evaluation and assessment of the potential for a School of Pharmacy and the delineation of the steps leading to its creation are thoughtfully set forth in an efficient and effective manner from inception.

Submittal Deadline:

To respond to this Invitation, consultants should respond to the Request for Proposal located at http://pps.unt.edu. The response to the proposal should be in clear and concise written format and sent to: Chris McCaskill, Purchaser IV, University of North Texas System, 2310 North Interstate 35-E, P.O. Box 310499, Denton, Texas 76203-0499. Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 10:00 a.m., CST, Monday, July 7, 2008 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

Questions:

Questions concerning this Invitation should be directed to: Chris McCaskill, Purchaser IV, University of North Texas System, 2310 North

Interstate 35-E, P.O. Box 310499, Denton, Texas 76203-0499. The UNT System may in its sole discretion respond in writing to questions concerning this Invitation. Only the UNT System's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200802788
Joey Saxon
Director of Purchasing and Payment Services
University of North Texas System
Filed: May 28, 2008

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The University of Texas System

Invitation for Consultants to Provide Offers of Consulting Services

In accordance with *Texas Government Code*, Chapter 2254, The University of Texas System (the "University") is seeking responses from consultants through an Invitation for Offer. The University is looking for a consultant to provide unbiased economic evaluation services to determine the relative risks and rewards of active participation in exploration, development, and operations of oil and gas interests on Permanent University Fund Lands (the "Consulting Services").

The Chancellor ad Interim has made a finding that the Consulting Services are necessary. While the University has a substantial need for the Consulting Services, the University does not currently have staff with expertise or experience with the Consulting Services and the University cannot obtain such Consulting Services through a contract with another state governmental entity.

The award for services will be made by the process indicated in an Invitation for Offer. The University will: (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and (2) if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

The individual to be contacted with an offer to provide such consulting services or to obtain a copy of the Invitation for Offer for the consulting services identified in this invitation is: Tim Hunt, University Lands, by mail: P.O. Box 553, Midland, Texas 79702; telephone: (432) 684-4404; or e-mail: thunt@utsystem.edu.

The proposal submission deadline will be June 27, 2008.

TRD-200802675
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: May 22, 2008

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Texas Water Development Board

Notice of Hearing

An attorney with the Texas Water Development Board will conduct a public hearing on the draft Fiscal Year 2009 Clean Water State Revolving Fund (CWSRF) Intended Use Plan. The hearing will begin at 1:30 p.m. on Friday, July 11, 2008, in Room 1-100 of the William B. Travis Building at 1701 N. Congress Ave., Austin, Texas 78701. Public access to the hearing room in William B. Travis Building is located at the southwest corner of the building.

The Intended Use Plan (IUP) contains a list of wastewater projects in prioritized order which will be considered for funding in Fiscal Year 2009 through the CWSRF loan program. The draft Fiscal Year 2009 CWSRF IUP has been prepared pursuant to rules adopted by the Texas Water Development Board in 31 Texas Administrative Code Chapter 375.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the draft IUP. In addition, persons may submit written comments no later than Monday, August 11, 2008 to Suzanne Lucignani, Project Finance and Construction Assistance, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711. Copies of the draft Fiscal Year 2009 CWSRF IUP will be available in Room 580 on the 5th floor of the Stephen F. Austin Building or may be obtained from the Texas Water Development Board, Project Finance and Construction Assistance, P.O. Box 13231, Austin, Texas 78711.

The hearing is conducted pursuant to 31 Texas Administrative Code §375.11 and 40 Code of Federal Regulations Part 25.

TRD-200802782
Ken Petersen
General Counsel
Texas Water Development Board
Filed: May 27, 2008

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Notice of Hearing

An attorney with the Texas Water Development Board will conduct a public hearing on the draft Fiscal Year 2009 Drinking Water State Revolving Fund (DWSRF) Intended Use Plan. The hearing will begin at 1:30 p.m. on Friday, July 11, 2008, in Room 1-100 of the William B. Travis Building at 1701 N. Congress Ave., Austin, Texas 78701. Public access to the hearing room in the William B. Travis Building is located at the southwest corner of the building.

The Intended Use Plan (IUP) contains a list of water projects in prioritized order which will be considered for funding in Fiscal Year 2009 through the DWSRF loan program. The draft Fiscal Year 2009 DWSRF IUP has been prepared pursuant to rules adopted by the Texas Water Development Board in 31 Texas Administrative Code Chapter 371.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the draft IUP. In addition, persons may submit written comments no later than Monday, August 11, 2008 to Earline Baker, Texas Water Development Board, Project Finance and Construction Assistance, P.O. Box 13231, Austin, Texas 78711. Copies of the draft Fiscal Year 2009 DWSRF IUP will be available in Room 580 on the 5th floor of the Stephen F. Austin Building or may be obtained from the Texas Water Development Board, Project Finance and Construction Assistance, P.O. Box 13231, Austin, Texas 78711.

The hearing is conducted pursuant to 31 Texas Administrative Code §371.11 and 40 Code of Federal Regulations Part 25.

TRD-200802783
Ken Petersen
General Counsel
Texas Water Development Board
Filed: May 27, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).